SEP 24 195
HAROLD B. WILLEY,

No. 371

IN THE

# SUPREME COURT

OF THE

# United States

**October Term, 1953**

In the Matter of the LOS ANGELES COUNTY PIONEER SOCIETY, a Corporation in the Process of Voluntarily Winding Up,
*Petitioner and Appellant,*
vs.
THE HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA,
*Respondent and Appellee.*

## PETITION FOR WRIT OF CERTIORARI REASONS FOR GRANTING THE WRIT AND MOTION FOR LEAVE TO PROCEED ON TYPEWRITTEN RECORD.

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## PETITION FOR WRIT OF CERTIORARI REASONS FOR GRANTING THE WRIT AND MOTION FOR LEAVE TO PROCEED ON TYPEWRITTEN RECORD.

*To the Honorable Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:*

Your Petitioner, the Los Angeles County Pioneer Society, respectfully petitions this Honorable Court for a Writ of Certiorari directed to the Supreme Court

of the State of California to review and reverse the order and judgment of that court which impaired the obligation of the contract of the State of California with the Los Angeles County Pioneer Society and its members with Mrs. Emma Wilhelmina Stoltenberg, a member, and arbitrarily and capriciously and without due process of law took away $95,243.54 of the Los Angeles County Pioneer Society's money and ordered it to be given to the Historical Society of Southern California over the objections and without any consent of the Pioneer Society or of Mrs. Emma Stoltenberg or her heirs in violation of Article I, Section 10, of the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States.

## OPINIONS BELOW

The Opinions and dissenting opinions of the members of the Supreme Court of California are found in 257 Pacific Reporter (2nd Series) 1; a prior opinion of the Court of Appeals is reported in 246 Pacific Reporter (2nd) 1029. The dissenting opinions contain a stirring indictment of the procedure and proceedings by which this money was taken from Pioneer Society in violation of the Constitution of the United States.

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## JURISDICTION

Jurisdiction is conferred by Article I, Section 10 and the Fourteenth Amendment to the U. S. Constitution, by Section 1247 of Title 28, U. S. Codes, and by Rule 38½ Rules of the Supreme Court of the United States. The decision of the Supreme Court of California was rendered May 5th, 1953 and petition for rehearing was denied May 28th, 1953. The petition for certiorari is filed within 90 days of the date of the denial of the Petition for Rehearing, and an extension granted by Mr. Justice Black to September 25, 1953.

## CONSTITUTIONAL PROVISIONS

Article I, Section 10 U. S. Constitution; 14th Amendment U. S. Constitution. Statutes involved are in the Appendix.

## STATEMENTS OF FACTS

In 1897, Pioneers who had been residing in Los Angeles County for thirty years or more formed an unincorporated association of the Los Angeles County Pioneers with about 600 members. (R. Tr. 126). Native sons were not members and not eligible. They had a separate organization. In 1910 Pioneer Society members decided to incorporate as a NON-PROFIT CORPORATION under the then existing laws of the State of California for non-profit corporations. The State granted it a charter. This constituted a contract between the State and the Society. Its incorporation was December 5th, 1910. It was formed under Division One, Part Four, Title 12 of the Civil Code of the State of California, for the incorporation of non-profit corporations. Article Two of the Articles of Incorporation provided as follows:

> "That the purpose for which this corporation is formed is *to cultivate social intercourse and friendship among its members,* to collect and preserve data touching the early history of Los Angeles County and the State of California, to collect and preserve articles, specimens and material things illustrative or demonstrative of the customs, modes and habits of the aforesaid times in said State; to perpetuate the memory of those who, by their labors and heroism, contributed to make the history of said County and State; and in furtherance of said purpose, to receive, purchase, sell, hold, convey, lease, rent and maintain all kinds of prop-

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erty, both real and personal; to build club houses, and to do any and all other acts necessary and convenient for the promotion of the aforesaid purpose; *and to exist as a social corporation under the provisions of the laws of the State of California, covering such corporations, and not for pecuniary profit.*"

Although it expressed several purposes, the minutes of the Society and the evidence of its activity showed, that it engaged solely or principally in social activities —that it met once a month, and its members talked over old times and entertained. It performed no charity. (Minute Book in Evidence.)

By-laws pursuant to the Corporation Laws of the State of California were adopted which provided that all persons of good moral character, thirty-five years of age or older, who at the date of their application shall have resided in Los Angeles County since September 1sf, 1883 shall be eligible for membership, and also all persons of good moral character of fifty years of age or older who have resided in the state forty years and in the county ten years previous to their application shall be eligible for membership. Persons born in the State are not eligible to membership, but those already admitted shall retain their membership. (Article I, By-Laws). Article IV of the Articles of Incorporation provided that the corporation "shall exist for the period of fifty years," and Article V provided that the number of directors shall be seven;

Article VI that the corporation is not formed for profit and shall have no capital stock; in Article VII the original incorporators, then prominent pioneers of Los Angeles County, were elected as directors. At the time of its incorporation Section 400 of the California Civil Code made the directors trustees of the dissolving corporation in the event of dissolution unless other persons are appointed by the court. A non-profit corporation might be dissolved in the same manner and with the same effect as stock corporations under the General Corporation Law. Such dissolution provides for the distribution of its assets to members after payment of debts.

The law regarding dissolution was a part of the contract between the State and the Pioneer Society, which could not be impaired.

There were no provisions in the By-Laws for any charity or help to the needy, except that sick and destitute members might receive an immediate relief of $30.00.

None of the purposes of the Society were actually carried out except the purpose expressed at first in the articles, to-wit: "that the purpose for which this corporation is formed is to cultivate social intercourse and friendship among its members," and it existed in accordance with its last paragraph *purely as a social corporation under the provisions of the laws of the State of California covering such corporations and not for pecuniary profit.*

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As such a corporation, the society received in addition to its dues from its members small gifts from its members and for its members from time to time.

In 1941 the membership of the Pioneer Society had dwindled to within the vicinity of less than one hundred members, each of whom was well known to the other. Mrs. Emma Stoltenberg, one of the members, made a gift to the Society of $15,000 toward the purchase of a meeting hall for the Society. (Exhibit K.)

On January 9, 1941, the Pioneer Society in accepting the gift of Mrs. Emma Stoltenberg did so on the following terms:

"Dear Miss Stoltenberg:

"The honorable board of directors of the Los Angeles County Pioneer Society have directed me, in their names, to personally thank you for your most precious gift, which will greatly aid the Pioneer Society, of which you are a beloved life member, towards the purchase of a home to be known as 'The Stoltenberg Home of the Los Angeles County Pioneer Society'.

"In this, you and all of our members will have reason to be justly proud."

(Signed) "Sincerely yours,
"Edith N. O'Shea"

and at the bottom designated as

"Sister Edith O'Shea
"Financial Secretary
"1810 South Menlo Avenue."

(on the letterhead of the Los Angeles County Pioneer Society, addressed to Miss Emma Wilhelmina Stoltenberg, 921½ West First Street, Los Angeles, California. —Exhibit D), (R. Tr. 295).

The foregoing constituted a contract between Mrs. Stoltenberg and the Society which could not be impaired by the State.

The Society did not build a hall but, with her knowledge and consent and that of the Society, bought a building at 746 South Figueroa Street in the City of Los Angeles, using the money of Mrs. Emma Stoltenberg toward the purchase of that property. The down payment was $19,500 and there was a mortgage of $10,500. To enable this down payment and this manner of financing Mrs. Stoltenberg in 1942 added $5,000 to her gift.

By frugal operations and careful management the Society actually and successfully operated the property at a profit. It received a rental of $500.00 per month for the lower floor. It had its own meeting hall without cost and used exclusively for its own membership. Its meetings were not open to the public. It had and acquired other property and its balance sheet in 1947 showed that it had cash on hand in the sum of $28,-332.75. During that year it received a profit of $5,-701.50, making its total at the end of the year, $34,-038.27 in cash. Its valuation as of 1947 was appraised at $95,263.67. The Figueroa Street property was variously appraised at $55,000 and $60,000 (Exhibit B).

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On May 1st, 1949 its balance sheet showed that the Society was then valued at $102,659.27.

The California Corporation Code, under which the Society was incorporated as a non-profit corporation, provides among other things that:

> "Carrying on business at a profit as an incident to the main purposes of the corporation and distribution of assets to members on dissolution are not forbidden to non-profit corporations."

And the corporation did engage in business only as an incident to its main purpose of social activities of its members.

The corporation paid income tax to the United States Government. It paid property tax to the State, and did not take or claim any exemptions at any time prior to the commencement of these proceedings, as a "charitable corporation". Its charter was as a non-profit corporation—not a "charitable corporation".

Mrs. Stoltenberg attended meetings regularly and associated with the various fellowmembers who were a part of her organization. At the time of her gifts to the Society, which were accepted and used by them on the express conditions designated—that it would be used toward the purchase of a meeting hall for the members of the Los Angeles County Pioneer Society —there were less than 100 members. Each of them was known by Mrs. Stoltenberg and to her and the Society was not open to the public, or any general part

of the public, and its meetings were attended solely by its own members.

The Society and its members continued to operate its building and its real estate at a profit. Other monies were invested in bonds.

**The Society paid income tax on its revenues and property tax on its real estate, and claimed no exemption as a charitable society. Nor did the State grant any tax exemption to the Society.**

In 1946, Mrs. Stoltenberg died and by the terms of her will she left the residue of her estate to the Pioneer Society without designations of any purpose. By the terms of this will $15,000 additional was left from the estate of Mrs. Stoltenberg in 1946 and $9,584.00 additional from the estate additionally as an outright gift with no trust provision.

The Society paid property tax to Los Angeles county since 1942; the Society also had a piece of property on Normandy Street, Los Angeles, which was bought for $6,000 and sold by the Society for $7,505.32 net, paying taxes on it. It also had a piece of property on 108th Street, which it bought for $3,000 and sold for $3,671.92. It also had $25,000 in the bank for which it received interest in the sum of $197.23. It had building and loan bonds in the sum of $1000.00 and $500.00 for which it received interest. It paid income tax in 1948 in the sum of $1547.68 and in 1949 in the sum of $975.98.

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As many of the members of the Pioneer Society were quite aged and some of them needed help, the Society considered what moves it might make to give charitable aid to any of its members financially. The membership roll was then down to 58 active members. A controversy arose to to whether the Society could do charity for any of its individual members or use its funds for charity. M. N. O. Pierce, then the president of the Society, challenged the right to do so. He wrote to the Secretary of State, questioning the right of the Society in this respect, and as a result a suit in declaratory relief was filed by the Society against M. N. O. Pierce, in the Superior Court of the State of California in and for the County of Los Angeles to determine its rights. The Secretary of State was notified, by letter, as was the Attorney General, but they did not then intervene.

The matter came on regularly for trial before a Judge of the Superior Court, Judge Myron Westover, who, on June 1, 1949, after trial of the issues, made findings of fact and conclusions of law to the effect that the Society was not a charitable society; that no trust was impressed upon any of its assets; that it was devoted to social purposes and could not use its money for any charitable purpose or for its members, that it could dissolve and upon dissolution distribute its assets rateably among its members pursuant to the provisions of the Corporation Code of California.[1]

[1]In 5 Ruling Case Law 372 it is said: "Although much of the work of a corporation which has no capital stock and which applies all of its revenues to the purposes of the organization may be of a charitable nature, yet if its purposes are also social, the corporation is not a public charitable corporation, but one established for the peculiar benefit of its membership."

California law provides that a judge of the Superior Court *must* bring in any necessary parties in any action (Section 389 Code of Civil Procedure). Judge Westover did not bring in the Attorney General in this controversy. The presumption is that he performed his official duty.

No appeal was taken from Judge Westover's judgment, but later, a motion was made to vacate and set aside his judgment, which motion was denied and no appeal taken from that order. His judgment has, therefore, remained final at all times.

Relying on this judgment construing Sections 9801 and 9200 of the Corporation Code, the membership, by a petition signed by 53 of the 58 members, voted to dissolve the corporation. The assets were all converted to cash, and, since the property owned by the corporation had greatly appreciated in value, $95,243.54 was realized. Pioneer then petitioned the Superior Court for judicial supervision of the dissolution, (Corp. Code §4607), and the distribution of its assets. Notice was posted and advertised. No active member of the Society objected to the dissolution, and no one came in to object within the time fixed by California law for such objections.

Further relying upon the judgment of Judge Westover in the suit in Declaratory Relief, the Society proceeded to seek court supervision for the winding up of its affairs and the distribution among its members of its assets as decreed by Judge Westover. Another judge, to-wit, Judge James H. Pope, a judge of the

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Municipal Court of the City of Los Angeles appointed *pro tempore* to sit on the Superior Court, was assigned to hear the later proceedings upon the winding up of the corporate affairs. (R. Tr. 3). Marshall Stimson was the attorney for the Historical Society and had proposed a merger of the two societies in 1942 (R. Tr. 638-42); at that time Mrs. Stoltenberg was still alive and had made her gift to the Pioneer Society and not to the Historical Society and was present to approve or disapprove of the proposed offer. Mr. Stimson's letter was dated September 19, 1942. The proposed offer and attempt on the part of the Historical Society to merge with Pioneer Society and thus acquire the Pioneer Society's building and assets was rejected.

Marshall Stimson, appearing now in 1950 in opposition to the dissolution proceedings and in the further attempt to acquire the sum of almost $100,000 of the Pioneer Society, claimed at first to be a member of the Pioneer Society, but it appeared that he had not paid dues since 1937, and, according to Cary Parsons, he had not been seen at any meeting for several years. Cary Parsons testified: He himself had been a "member of the Pioneer Society since 1940 and has never missed a meeting since that date"; that he has never seen Marshall Stimson at any meeting nor at any of the picnics, (R. Tr. 648), and Stimson admitted he had not paid dues for eleven years. Abandoning his own claim to membership, he then claimed to represent Joseph Scott, but later he stated that Joseph Scott did not want him to represent him. Thereupon he claimed to represent

Sheriff Eugene Biscailuz. Mr. Biscailuz was in favor of dissolution and had signed his name to the petition. Mr. Stimson was not authorized to represent him. Later Mr. Stimson persuaded Martha Rand to permit him to represent her in the proceeding. She was a member then but is now deceased. The right of action and membership terminates under California law upon their death.

Not a single member in good standing, except Mrs. Martha Rand, was an objector and her objection was not made within the time made or fixed by law. The statement in the majority opinion of the California Court that several members objected is erroneous and not based upon the facts.

Mr. Stimson was joined on behalf of the Historical Society by Oscar Lawler, a prominent corporation attorney who represents Standard Oil Company, the Pacific Telephone and Telegraph Company and large newspaper interests, who in turn persuaded the then Attorney General to intervene.

Voluntary proceedings in the process of winding up under court supervision were partly completed when, on February 23, 1950, the Attorney General sought to intervene alleging—contrary to Pioneer's charter as a non-profit corporation—that the Los Angeles County Pioneer Society is a "charitable corporation" and its assets are charged with a "public trust" to be devoted to "charitable purposes" and alleged that the Society is seeking to distribute all of its assets to the current active members of the Society, (Clks. Tr. 12-14), and

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he prayed that the court issue its appropriate order forbidding and restraining the society from disposing of its assets except upon order of the court; impounding the assets; dissolving the society and prohibiting and restraining the distribution of any assets; distributing the assets in such a manner that said assets will remain dedicated to the public, charitable and benevolent purposes and trust for which said assets were formerly held by said Society. (Clks. Tr. 15).

No notice, as required by Section 4691 Corporation Code and no request was made by the Attorney General to allow the Pioneer Society itself to correct its deviation, if any, then or at any time.

Pioneer answered that the gifts during the lifetime of Emma Wilhelmina Stoltenberg and from her estate after her death were not for charitable purposes but were for the construction of a building or home for the Los Angeles Pioneer Society; that said funds were so used for that purpose; that due to the advanced age of the membership, the average being approximately 75 years of age, the membership dwindled down to 63; shortly thereafter five more passed away, leaving the membership at 58 members (Clk. Tr. 18). The Pioneer Society also pleaded estoppel by the judgment in declaratory relief in the case of *Los Angeles County Pioneer Society, a corporation, plaintiff, vs. M. N. O. Pierce, defendant, No. 559-035,* decided by the Honorable Myron Westover and then further pleaded that it had carried out the purposes of the Society and cultivated social intercourse and friendship among its members; attended meetings, held picnics, celebrated

the anniversary of the founding of the City of Los Angeles; had talks among the former members, and had erected a plaque, and had acquired articles, material and data of the Pioneers and founders of Los Angeles County. (Clks. Tr. 20-21). The Society further asked the court to settle its final affairs, pay its obligations and distribute the money *pro rata* among the members of the Pioneer Society; **that the officers and directors of the Los Angeles County Pioneer Society be authorized and directed to set aside the sum of $11,000.00 for a Federal Capital Gains Tax Fund,** and that the court adjudge and decree, pursuant to the provisions of the judgment in the declaratory relief suit that none of the assets of the Los Angeles County Pioneer Society are impressed with a trust nor are they dedicated or consecrated to charitable or benevolent purposes. (Clks. Tr. 21, 22).

Judge Pope, the second judge hearing the case, rendered an interlocutory judgment on May 19, 1950 (Clks. Tr. 51-53) in which he held—contrary to Pioneer Society's charter and contract with the State and the previous judgment—that the Los Angeles County Pioneer Society is "a charitable and benevolent corporation" and that the property in the possession of the said corporation is property "held in trust for charitable and benevolent purposes," and he adjudged that the court should appoint a new trustee to carry out the purposes of the trust, and he restrained the said corporation and its officers from disposing of any assets of the corporation without an order of the court,

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and he further decreed that the court, from time to time, should make such other and further orders as are competent, lawful and proper for a complete determination of the action.

In the meantime all of the Los Angeles County Pioneer Society's money was taken from it by court order and impounded in the Farmers and Merchants Bank at Los Angeles to be held to await the outcome of the proceedings.

Attorney Stimson in a direct attack on the judgment also moved the Superior Court to vacate and annul Judge Westover's judgment which motion was fully heard and argued and denied and no appeal ever taken from it.

On October 18, 1950, Judge Pope without the consent and over the opposition of Pioneer Society, appointed the Historical Society as Trustee and ordered the funds of the Pioneer Society turned over to the Historical Society of Southern California and stripped the Pioneer Society of all its assets. From this order an appeal was taken to the District Court of Appeal, Second Appellate District, State of California, and to the Supreme Court of the State of California. The federal questions of impairment of obligation of contract and violation of due process were raised and denied by the California courts.

A few weeks after Judge Pope first announced his Interlocutory Judgment the then attorneys for the Pioneer Society on behalf of Frank Y. Pearne, Presi-

dent of the Pioneer Society, *wrote* to Judge Pope and stated that if in his opinion the society was in fact a charitable organization that its members had a long and historical record as law abiding citizens and that they would treat the money as trust funds and go ahead and act on that basis, if permitted to do so. The court declined to act or accord them that right. A conference by Mr. Pearne was also held with the Deputy Attorney General and he likewise informed the Deputy Attorney General that Pioneer did not wish to use the funds in any other way than that the court thought or decreed to be proper and that the Society would use the funds for charitable and benevolent purposes if permitted to do so, and he was informed that the Society would not be permitted to do so, that it was "too late". Thus Pioneer by applying to the court for a court judgment and following it found itself stripped of its assets.

No opportunity was given to Pioneer Society at any time after the second court had changed the judgment of the first court to correct the alleged non-compliance, if any there was, as permitted and required by Section 4691 of the Corporation Code of the State of California.

During the pendency of the appeal in the Supreme Court of the State of California, the Pioneer Society, in view of the intervening developments, voted to revoke its resolution to wind up its affairs and voted to resume its previous status and to ask the court to return its money to it and to allow it to carry out for

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itself the purposes which the last California court said it had, namely, "that the money was a charitable fund, and that the Society, contrary to its charter, was a "charitable corporation".

A motion was made and argued at the time of oral argument in the Supreme Court of the State of California to remand the case to the Superior Court for the taking of testimony that it had revoked its resolution to wind up its affairs and that it had not and did not dissolve, and to permit it to have the money impounded in the bank returned to its treasury. The Supreme Court of California denied the motions, two justices vigorously dissenting, (257 Pac. (2d) page 1, 10-14).

Petitioners contend that they had a right to this 30-day notice after the Supreme Court ruled that they were in fact a "charitable corporation"—a ruling that conflicts with the charter granted to them as a "non-profit" corporation.

The federal questions were first raised by the appellants in the District Court of Appeal, Second Appellate District, State of California, in their briefs and oral argument in that court where it was contended that Section 9801 California Corporation Code, as construed and applied in this case was violative of the 14th Amendment; that the taking of property of the members of the Pioneer Society and giving it to another society was the taking of property without due process of law guaranteed by the Fourteenth Amend-

ment to the Constitution of the United States, and that it was a forfeiture of Pioneer Society's money unauthorized by any statute or any law; and contravened the 14th Amendment to the U. S. Constitution; also that it impaired the obligation of contract in violation of Article I, Section 10 U. S Constitution.

It was further contended that voluntary dissolution of a corporation in California is a special statutory proceeding and the jurisdiction of the court is limited to the terms of the statute, and that no statute in California authorizes the taking of the property of one non-profit society and giving it to another without its consent, and that if any statute did so it contravened the Fourteenth Amendment to the Constitution of the United States. The matter was again presented in oral argument in the District Court of Appeal, Second Appellate District, Division Two. That court affirmed the order of the Superior Court, on July 25th, 1952. That court implicitly denied the federal contentions which had been made, although it did not discuss them in its opinion. Its principal view was that the interlocutory order entered on May 19th, 1950 was a final order and therefore appealable (a view later rejected by the Supreme Court of California) and merely discussed the appointment of Historical Society as trustee; and as to whether the Superior Court abused its discretion in appointing Historical Society as trustee of Pioneer's assets, and upon that basis only did it consider Pioneer's points.

The Supreme Court of California granted a hearing. There the appellants contended that the contract of

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the State of California by its charter made it a non-profit society, that the taking of its funds given to it by one of its members and accepted by it upon the specific condition that it would be used for its own members was a contract and could not be impaired by the State in its construction and application of Section 9801 Corporation Code, and that the taking of these funds and giving them to a society of which the donor was not a member and in which she had no interest, over the objections of the Pioneer Society, was an actual taking of the Pioneer Society's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States and the property rights guaranteed to corporations was, insofar as any section of the Corporation Code of California is construed and applied to authorize the taking of the money or property from the Pioneer Society and giving it to another society, in violation of the Fourteenth Amendment to the Constitution of the United States and also Article I, Section 10 of the Constitution of the United States. That the charter of a corporation is a contract with the State, and that membership in a corporation is a contract by reason of which members have contractural rights in the property of a corporation and have a right to receive property from one of its members on condition that it will be used by or for the corporation and its members under the specific authority of the statute as it existed at the time of the gift and the acceptance of the gift by the society; that upon dissolution, Section 9200 of the Corporation Code providing for distribu-

tion of its assets among its members was a part of the contract that prevailed; that no state may impair or breach the obligation of contract; that insofar as Section 9801 of the Corporation Code, inherently and as construed and applied in this case, as authorizing the arbitrary taking of Pioneer's money and giving it to Historical Society, the statute impairs the obligation of contract forbidden by Article I, Section 10, of the Constitution of the United States. That the only authority of the Attorney General in the event of noncompliance with the provisions of the Code is to compel a correction and to give ample notice and an opportunity to *correct* (Sections 4691, 10207 Corporation Code of California)—all of which was denied to the Pioneer Society. That the action in this case of state officials is special, partial, arbitrary, and capricious and in violation of due process of law and the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and that the law in this instance was administered by state officials with an evil eye and an uneven hand in violation of the Fourteenth Amendment. That these matters were presented in the Petition for Hearing in the Supreme Court of the State of California and in the oral argument in that court. That court specifically passed upon the contention holding that the Fourteenth Amendment was not violated and implicitly denied that there was any impairment of obligations of contract (257 Pac. (2d) 1, 7).

It was further contended by Pioneer Society that the gifts of Mrs. Stoltenberg to the Pioneer Society

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reverted to her heirs in the event that Pioneer was not entitled to hold the money, since the law of California at the time of her gifts was that if the trust terminates the property reverts upon dissolution of the Corporation to the donor or her heirs,

> *People v. President and Trustees of the College of California,* 38 Cal. 166, 174;
> *Victoria Hospital Assn. v. All Persons,* 169 Cal. 455, 464,

and that the construction and application placed upon Section 9801 of the Corporation Code of California, did impair the obligation of contract between the State and the Society and Mrs. Stoltenberg, one of its members, which required that if there was a trust and that failed that the money if not distributed rateably reverted to her heirs. This contention was also rejected in the majority opinion of the Supreme Court of the State of California.

In a strong dissenting opinion Justice Carter held that the Pioneer Society was not "a charitable corporation". The law of California is that in the case of a non-profit corporation existing for the private benefit of its members, upon dissolution assets are distributed among its members. (Corporation Code 9200, §9801). He further stated that due process of law required that if the cause of action is a matter or act which the corporation has done or omitted to do, that can be corrected by amendment, that the attorney general shall not maintain any action unless he gives at least thirty

days written notice prior to the institution of suit and the corporation has failed, neglected or refused to institute proceedings to correct it. He stated further, "the section provides for 'correction' of a non-compliance or departure; it does not prohibit a self-correction by the erring corporation. If Pioneer terminates its dissolution proceedings, and continues as it has done in the past, then, under the view taken by the majority of this Court, it will be carrying on its charitable purposes and there is no reason why a successor trustee should be appointed to administer Pioneer's funds." In this opinion Justice Schauer concurred.

**On rehearing, Justices Carter and Schauer each wrote strong dissenting opinions. Justice Carter stated, "The Record in this case presents one of the most outrageous examples of legalized larceny which has come under my observation," and later on he wrote, "Even if Pioneer is a charitable organization, which I am firmly convinced it is not) it has the right to abandon its dissolution proceedings and correct any deviation from its articles of incorporation. To refuse to permit such corrective action is, in my opinion, to deprive Pioneer of its property without due process of law under both the federal and state constitutions."**

In a separate dissenting opinion, Justice Schauer wrote:

> "Pioneer, by its articles of incorporation and the laws of California was not a charitable corporation; it never intended or pretended to be a

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charitable corporation; it paid taxes as a non-charitable corporation; it was adjudicated not to be a charitable corporation. With that background it instituted a proceeding for dissolution as it had a right to do. Its every act shows the good faith of the fine citizens composing it. Now this court rules that it is a charitable corporation and in the same judgment punishes Pioneer for instituting the lawful dissolution proceeding by stripping it of its assets and giving them to another; it refuses even to permit Pioneer, despite the authorization of the statute, to discontinue the dissolution proceeding and to carry out the trust which the court adjudges to exist.

Such action in my view is contrary to fact, to law, to justice, to reason and to constitutional guarantees."

## QUESTIONS PRESENTED BY THIS PETITION

### I.

Whether Section 9801 of the Corporation Code of California, adopted in 1947, inherently and as construed and applied in this case impairs the obligation of contract entered into by and between member Emma Wilhelmina Stoltenberg and the Pioneer Society, in 1941 and 1942, by which she gave a gift toward the purchase of a home for the Society and the Society accepted the gift for that specific purpose and for the benefit of its own members and no one else.

II.

Whether Section 9801 of the Corporation Code of California, inherently and as construed and applied in this case, impairs the obligation of contract between the State of California and the Los Angeles County Pioneer Society, by the terms and provisions of which was "to receive, purchase, sell, hold, convey, lease, rent, and maintain all kinds of property, both real and personal; to build club houses," etc., and the provisions of Section 9200 of the Corporation Code which became a part of the contract of the State with the Pioneer Society, that carrying on business at a profit as an incident to the main purposes of the corporation and the distribution of assets to the members on dissolution are not forbidden to corporations (Section 9200 of the Corporation Code).

III.

Whether Section 9801 of the Corporation Code, inherently and as construed and applied in this case, does not impair the obligation of the contract of Pioneer Society in the light of California law in effect at the time of the acceptance of the gift and thereby made a part of the contract between the donor and the Society.

IV.

Whether the obligation of contract between Emma Wilhelmina Stoltenberg and Pioneer Society are impaired in holding that money which the Pioneer Society has realized in its business operation, upon the failure of the trust, if there was a trust and such failure

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did occur, did not and does not revert to the heirs of Emma Wilhelmina Stoltenberg, and whether this was not a part of the contract between Pioneer Society and Emma Wilhelmina Stoltenberg, which Pioneer Society is obligated to carry out.

V.

Whether Judge Westover's judgment construing Pioneer's charter as that of a non-profit association and construing Section 9200 of the Corporation Code providing that on dissolution a non-profit corporation must distribute its assets to its members is a contract between the State and Pioneer Society on which Pioneer Society had a right to rely and which could not be impaired by another judge of the same court giving another construction without impairing the obligation of contract in violation of Article I, Section 10, U. S. Constitution.

VI.

Whether the arbitrary and capricious taking of Pioneer Society's money ($95,263.67) and giving it to the Historical Society was a taking without due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

VII.

Whether the taking of Pioneer Society's money and giving it to Historical Society without the required statutory notice and an opportunity to correct any deviations is a violation of due process of law guaran-

teed by the Fourteenth Amendment to the Constitution of the United States.

VIII.

Whether the taking of Pioneer Society's money was special, arbitrary and capricious and done with an evil eye and uneven hand in violation of the Fourteenth Amendment to the Constitution of the United States.

IX.

Whether the judgment of a State Superior Court Judge construing state statutes (Sections 9801, 9200, Corporation Code) rendered in a declaratory relief action and relied upon by the Society was an estoppel as against another State Superior Court Judge's order taking away the Society's money, by giving those statutes in a different construction, and impaired the obligation of contract in violation of Article I, Section 10, U. S. Constitution.

X.

Whether procedural due process guaranteed by the Fourteenth Amendment to the Constitution of the United States was denied Pioneer Society when the statutory requirement of notice and request for compliance was never given Pioneer Society as required by the Corporation Code of California, and whether the right to that statutory notice and request for compliance does not date from the final determination of the court that the Society is a "charitable corporation" —although incorporated as a non-profit society and

that the funds involved were in fact impressed with a trust and non-distributable.

## XI.

Whether the Pioneer Society's notice to the trial judge and attorney general immediately after the court decision by the second judge holding the funds were impressed with a trust and notice to the attorney general of its willingness to comply with the last court's view and their devious refusal to accept this proposal constituted a denied of procedural due process of law guaranteed by the Fourteenth Amendment to the U. S. Constitution and was arbitrary and capricious since it constituted an offer to correct any deviation and complied with Section 4691 and 10207 Corporation Code of California.

## XII.

Whether denial to Pioneer Society of its motion to remand the case to the Superior Court with directions to take further testimony showing it has revoked its resolution to dissolve and to return its assets to it denied Pioneer Society due process of law and equal protection of the law guaranteed by the Fourteenth Amendment to the U. S. Constitution, and impaired the obligation of contract between the State and Pioneer under its charter and statute permitting it to revoke its intention to dissolve.

XIII

Whether Pioneer Society was denied due process of law guaranteed by the 14th Amendment to the U. S. Constitution where its money and property were arbitrarily taken from it when it is not wound up and dissolved and has decided not to dissolve and where the only statutory jurisdiction is to correct any non-compliance and no provision exists for a forfeiture of its property.

## REASONS FOR GRANTING THE WRIT

I.

The Supreme Court of the State of California in stripping Pioneer Society of $95,243.34 acted specially, partially, arbitrarily and capriciously and with an uneven hand against the appellants, impairing the obligation of contract contrary to the express provisions of Article I, Section 10, of the Constitution of the United States, and in violation of due process of law and the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

II.

The Supreme Court of the State of California has decided questions of federal constitutional law contrary to the decisions of this Court and contrary to fundamental justice. The decision is wrong; the result is wrong.

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This case is important on the question of due process of law, since it involves the right of a State in construing a statute, Section 9801 Corporation Code, to take the property of a non-profit society and give it to another society, because the second society is better liked and has more members or because the second society has more political influence, or more weighty advocates.

This case affects every non-profit society in America. Pursuant to existing laws the California charter and by-laws vested all rights of the Society in its directors. Section 9801 of the Corporation Code passed in 1947, as construed and applied in this case removed the right of the directors to distribute their funds and to select any successor trustee, and thus alters and impairs the obligation of contract between the State and the Society. Changing the Society from a "non-profit corporation" as designated by its charter, to a "charitable corporation" not so designated, impairs the state's obligation of contract. *Dartmouth College v. Woodward, 4 Wheat.* (U. S.) 518, 4 L. Ed. 629. There are many social and benevolent corporations whose benefits come from and run only to their members, which can in no sense be called public charities for the benefit of all unnamed or unidentifiable persons. One of these is the Masonic Fraternity, and its outlying Mystic Shrine, which has established children's hospitals; others the Knights of Columbus, its Newman Halls; the Independent Order of Odd Fellows, the Eagles, the Boy Scouts, and many other

non-profit societies. Certainly, if one of them petitioned to dissolve, its assets could be lawfully turned over to some other society and taken away from it under the authority of this California decision if allowed to stand, under the simple device of holding, contrary to their charter, that the society was a charitable corporation, and that it was not administering its trust and some other society could do it better.

This case is also important to the government in determining tax liability or exemption of non-profit corporations in the sale of their property. If the funds are distributable to its members the government gets its tax share. If it is "charitable" it is exempt.

The Supreme Court of the State of California has construed and applied Section 9801 of the Corporations Code of the State of California unconstitutionally, "contrary to fact, to law, to reason and the constitutional guarantees"—Justice B. Ray Schauer of the Supreme Court of the State of California (257 P. (2d) 15).

> "The record in the case presents one of the most outrageous examples of legalized larceny which has come under my observation."—Justice Jesse W. Carter. (257 P. (2d) 14).

The Supreme Court of the State of California, in its construction and application of Section 9801 of the Corporations Code of the State of California, impaired the obligation of contract contrary to Article I, Sec. 10, of the Constitution of the United States, and acted

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specially, partially, arbitrarily and capriciously, and with an uneven hand and an evil eye against the appellant Society, and without due process of law has entered an order taking its property from it in violation of the 14th Amendment to the Constitution of the United States.

The dissenting opinion, reported in 41 Adv. Cal. Rep. 122, 123 (257 Pac. 10-15), so strongly emphasizes a departure from due process of law under the Federal Constitution as to present a case for certiorari or appeal involving important questions of law, which should be decided by the Supreme Court of the United States.

Where the question of the impairment of the obligation of contract contrary to the express provisions of Article I, Sec. 10 of the Constitution of the United States, are raised, the U. S. Supreme Court will for itself determine the effect and meaning of the contract involved, as well as its existent and its impairment.

*Angel v. Bullington,* 330 U. S. 183, 211; 91 L. Ed 832;
*McKnitt v. St. Louis & S. F. R. R. Co.,* 292 U. S. 230, 233; 78 L. Ed. 1227, 1229;
*Davis v. Wechsler,* 263 U. S. 22.

The language of *Dartmouth College v. Woodward,* 4 Wheat. 518; 4 L. Ed. 629, 657, comes into play. Like the donors in the *Dartmouth College* case, Mrs. Stoltenberg made her gift to persons and a Society approved by her. She contracted for its use by persons selected

by her—not strangers—in a non-profit corporation (not a charitable one) of her own choosing.

In *Fletcher* Cyclopedia of the Law of Private Corporations, Volume 7, Chapter 43 deals with Amendment or Repeal of Charter of Private Corporations. We quote from §3658, entitled "Constitutional restrictions; impairment of contract obligation—In general," in some instance inserting the footnote in the context within brackets:

> "The charter of a corporation, whether conferred by special act or existing under general laws, being, as stated above, a contract, as such is protected by constitutional provisions. [*Superior Water, Light & Power Co. v. City of Superior,* 263 U. S. 125, 68 L. Ed. 204, 44 Sup. Ct. 82, rev'g 176 Wis. 626, 187 N. W. 677.] Where the constitutionality of an act of the legislature amending or repealing a corporate charter is challenged, the question is whether the act violates any of the litigant's constitutional rights to have the obligation of his contract unimpaired and his property and liberty uninterfered with except by due process of law, and to the protection of equal laws. [*In re Mt. Sinai Hospital,* 250 N. Y. 103, 164 N. E. 871, 62 A.L.R. 564.] The clause of the Federal Constitution which declares that no state shall pass any law impairing the obligation of contract [*U. S. Const.* art. I, §10], and which applies to the various states of the Union [*Dist. of Columbia v. Capital Traction Co.,* 41 App. Cas. (D. C.) 115], extends to the contract existing with the corporation in all its aspects. Thus it extends to the obligations

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of the contract between the corporation and the state, between the stockholders and the state and between the corporation and the stockholders. And in the absence of a provision reserving the right to alter, amend or repeal a corporate charter, subsequent legislation, whether general or special in character, impairing the obligation of the charter is beyond the power of the legislature.

"The principles on the subject of the protection which the charters of private corporations are entitled to under the clause of the federal constitution against impairment of the obligation of contract were first announced authoritatively by the United States Supreme Court in the *Dartmouth College* case decided in 1819 [*Trustees of Dartmouth College v. Woodward,* 4 Wheat. (U. S.) 518, 4 L. Ed. 629], which cited an earlier Massachusetts case as advancing the proposition that the rights legally vested in a corporation could not be controlled or destroyed by any subsequent statute, unless a power to that effect was reserved in the act of incorporation. The decision in the *Dartmouth College* case gave a more extended scope to the constitutional clause in question than had been accorded to it up to that time.

["The opinion in that case," said the court in *Greenwood v. Freight Co.,* 105 U. S. 13, 26 L. Ed. 961, speaking of the *Dartmouth College* case, "carried the protection of the constitutional provision somewhat in advance of what had been decided in *Fletcher v. Peck* (6 Cranch. 87), and the preceding cases, and held that it applied not only to contracts between individuals, and to grants of property made by the state to individuals or to cor-

porations, but that the rights and franchises conferred upon private as distinguished from public corporations by the legislative acts under which their existence was authorized, and the rights to exercise the functions conferred upon them by the statute, were, when accepted by the corporators, contracts which the state could not impair." As to the scope of the decision in the *Dartmouth College* case, see the article by Mr. R. S. Hall, in 20 Green Bay, "The Dartmouth College Case."]."

. . .

Under the title "Illustrations of vested rights," in the same Chapter 43, it is stated:

"Under its reserved power, the state cannot take the property of one corporation and turn it over to another. [*Ohio v. Neff,* 52 Ohio St. 375, 40 N. E. 720, 28 L.R.A. 409 (property of private eleemosynary corporation). Wisconsin Laws of 1903, p. 341, ch. 229, enacted during the life of a mutual insurance company, providing for reorganization of such company and the distribution of its assets or the bestowal thereof upon another without the consent of all of its members, held unconstitutional. *Huber v. Martin,* 127 Wis. 412, 105 N. W. 1031, 1035, 3 L.R.A. (N.S.) 653, 115 Am. St. Rep. 1023, 7 Ann. Cas. 400.

[*In re Opinion of the Justices,* 66 N. H. 629, 33 Atl. 1076. The reserved power does not authorize an amendment transferring the vested property rights of a corporation to the public or otherwise except under the principles of eminent domain and upon compensation duly made. *Watts v.*

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*Lenoir & Blowing Rock Turnpike Co.,* 181 N. C. 129, 106 S. E. 497.]"

## ARGUMENT

Impairment of the obligation of these contracts in violation of Article I, Section 10 U. S. Constitution are involved:

(1) The contract between the State and the Pioneer Society through the granting to Pioneer of its charter as a non-profit corporation; dissolution of Pioneer and distribution of its assets among its members upon dissolution as provided by California statutes is part of the contract between the State and Pioneer Society which cannot be impaired (Section 9200 Corporation Code of California).

(2) The contract between the Pioneer Society and its members and Mrs. Emma Wilhelmina Stoltenberg when she made her gift to the Society to be used by and for the Pioneer Society and its members only.

(3) The contract between the State and Pioneer, based upon the judgment of Judge Westover in construing Sections 9801 and 9200 California Corporation Code, that Pioneer is not a charitable corporation, and on dissolution that its assets must be distributed rateably among its members.

(4) The contract between Mrs. Stoltenberg and Pioneer Society members based upon Section 9200 Corporation Code (formerly 583 Civil Code) which became a part of her contract, that upon dissolution its assets

were to be distributed among its members, and if not, then the property or money reverted to her or her heirs. (The law of California as construed by its courts at the time of the gift. *People v. Trustees of College of California,* 38 Cal. 166, 174; *Victoria Hospital Assn. v. All Persons,* 169 Cal. 455, 464.)

(5) The contract between the State and Pioneer Society through the Corporation Code that Pioneer could elect to wind up its affairs, and before dissolution, revoke its intention to wind up its affairs without any taking of its assets from it. (Sec. 4608 Corporation Code.)

(6) The contract between the State and Pioneer Society that if it deviated from any trust that the Attorney General must give it 30 days written notice of non-compliance and give it a chance to correct the non-compliance—none of which was given here.

(7) The contract between the State and Pioneer Society that Pioneer Society could deal in property; that it was its own—that it could not be forfeited by construing and applying a State statute to hold that it was a "charitable corporation"—contrary to its charter and contrary to the statutory means of organizing charitable corporations.

(8) The contract between the State and Pioneer Society (if it was a "charitable corporation") that if it deviated from the trust it is entitled to 30 days notice to correct any non-compliance before its assets can be taken from it (Section 4691 Corporation Code). That

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date did not and does not commence to run until the final court determination that Pioneer is a "charitable corporation" and its funds impressed with a trust.

The money Mrs. Emma Wilhelmina Stoltenberg gave to the Pioneer Society toward the purchase of a home for Pioneer Society members and accepted by the Pioneer Society members was a contract which could not be impaired by the State of California. The State by its charter had authorized Pioneer to accept such gifts on terms which Pioneer agreed to. California statutes were a part of the contract.

When the question of impairment of a contract under Article I, Section 10, of the Constitution is raised the obligation and power of the Supreme Court of the United States is to determine for itself the effect and meaning of the contract as well as its existence and the question of its impairment.

*United States Mortgage Co. v. Matthews,* 293 U. S. 232, 236, 79 L. Ed. 299, 301;

*Funkhouser v. Preston Co.,* 290 U. S. 163, 167, 78 L. Ed. 243, 245;

*Irving Trust Company v. Day,* 314 U. S. 556, 561;

*Douglas v. Kentucky,* 168 U. S. 488, 502, 42 L. Ed. 553, 557;

*Railroad Commission v. Eastern Railroad Co.,* 264 U. S. 79, 86, 87, 68 L. Ed. 469;

*Coolidge v. Long,* 282 U. S. 582, 597, 75 L. Ed. 562, 567;

The money was given to the Pioneer Society members by a fellow member, Mrs. Stoltenberg, to be used for their sole benefit. It was accepted by them under the authority of their charter, for that use. Mrs. Stoltenberg knew each and every one of the members of the society and she knew that it was limited to a definite number of persons all of whom she knew. The By-Laws of the Society did not permit persons born in the state to membership. The Historical Society had such persons as members and was in existence at the time that she gave her gift and made her arrangements with the Pioneer Society. The Pioneer Society agreed to purchase a property, with her knowledge and consent, and to pay it off by its own management and labors. This was all a part of the contract between Mrs. Stoltenberg and the Pioneer Society and accepted by them. She is presumed to know that on dissolution or termination of the non-profits corporation its assets under Section 9200 Corporation Code could go rateably to its members. Neither Section 9801 of the Corporation Code nor the judgment thereunder could impair it without violating Article I, Section 10, of the Constitution of the United States.

The law as it then existed in California also provided that if a trust failed that the reversionary rights went to the heirs.

*People v. President & Trustees of the College of California,* 38 Cal. 166, 174;

*Victoria Hospital Assn. v. All Persons,* 169 Cal. 455, 464;

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*Christ Church of Latter Day Saints v. United States,* 136 U. S. 1, 47;
*Mott v. Danville Seminary,* 129 Ill. 403, 416.

The Supreme Court of the State of California held that it overruled its previous decision and disapproved the decisions of this Court without violating either the due process clause or the contract clause of the United States Constitution. We challenge this construction as in violation of Article I, Section 10 U. S. Constitution and the 14th Amendment U. S. Constitution.

However, the law as it existed at the time that Mrs. Stoltenberg made her contract with the Pioneer Society and its acceptance by the Pioneer Society as it then existed was a part of and became a part of the contract, which could not be impaired.

A decision of a State Court may give effect to a state statute and thereby impair the obligation of a contract with the state, although the court does not mention the statute.

*Houston & T. T. R. Co. v. Texas,* 177 U. S. 66.

A statute substituted without the consent of the *cestuis que* trust, new trustees in place of those named in the mortgage executed to secure railroad bonds, would impair the obligation of contract.

*Napp v. Troy & B. R. Co.,* 20 Wall. 117.

An obligation of a contract valid by the laws of the state at the time it was entered into by the parties

cannot be impaired by a subsequent act of the legislature or by a decision of the court.

*Chicago v. Sheldon,* 9 Wall. 50;
*Havemeyer v. Iowa County,* 3 Wall. 294.

Rights and reversion and/or remainder are protected by the contract clause of the Constitution.

*Webster v. Cooper,* 14 Howe. 488.

A corporation has the same rights to the protection of the laws as a natural citizen.

*Home Ins. Co. v. Morris,* 20 Wall. 445.

When the state court has once interpreted the contract that interpretation becomes a part of the contract and any subsequent change to the injury of the contracting parties impairs the obligation of the contract.

*Sauer v. New York,* 206 U. S. 536; 51 L. Ed. 1176;
*Muhlker v. N. Y. etc. R. Co.,* 197 U. S. 570; 49 L. Ed. 872;
*Douglass v. Pike Co.,* 101 U. S. 687; 25 L. Ed. 968;
*Harmon v. Auditor Pub. Accts.,* 123 Ill. 122;
*Wisconsin Lumber Co. v. State,* 97 Mass. 571;
*Willoughby v. Holderness,* 62 N. Y. 227;
*Ex parte McKnight,* 4 Ohio Dec. 284.

Judge Westover's decision became a contract on which Pioneer Society had a right to rely. It was *res judicata* of all rights of the Society.

*Angel v. Bullington,* 330 U. S. 181, 211, 91 L. Ed. 832;
*J. W. Perry Co. v. Norfolk,* 220 U. S. 472.

If a contract, when made, was valid by the laws of the state it then expounded by its court, its validity and obligation cannot be impaired by any subsequent act or court decision altering the construction of the law.

*Ohio Life Ins. & Tea Co. v. Debolt,* 16 Howe. 416.

After a statute has been settled by judicial construction, the construction becomes, as far as contract rights are concerned, as much a part of the statute as the text itself, and a change of decision is to all intent and purposes the same, in effect, on contracts as an amendment of the law by means of a legislative enactment.

*Union Bank v. Board of Commrs. of Oxford,* 90 Fed. 7 at 9;
*Douglass v. Pike County,* 101 U. S. 677;
*Louisiana Ex Rel So. Bank v. Pillsbury,* 105 U. S. 278;
*German Savings Bank v. Franklin County,* 128 U. S. 526;
*Los Angeles v. Los Angeles City Water Co.,* 177 U. S. 558;

*Thompson v. Perrine,* 103 U. S. 106;
*Houston and T. T. R. Co. v. Texas,* 177 U. S. 66;
*Thomson v. Lee County,* 3 Wall. 327.

*Union Bank v. Board of Commrs. of Oxford, N. C.* (1898) 90 Fed. 7, at 9:

"It is well settled that the laws which are in force at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of the contract as much as though they were incorporated in its terms. This principle embraces the acts which affect its validity, construction, discharge, and enforcement, or the remedies under the contract. *Von Hoffman v. City of Quincy,* 4 Wall. 535; *Walker v. Whitehead,* 16 Wall. 314; *Edwards v. Kearzey,* 96 U. S. 595; *Barnitz v. Beverly,* 163 U. S. 118, 16 Sup. Ct. 1042. And this means that the law as understood and construed by the courts where the contract is made and to be performed enters into the contract. Chief Justice Taney, in delivering the opinion of the court in *Trust Co. v. Debolt,* 16 How. 432, says: 'Indeed, the duty imposed upon this court to enforce contracts honestly and legally made would be vain and nugatory if we were bound to follow those changes in judicial decisions which the lapse of time and the change in judicial officers will often produce; . . . and the sound and true rule is that, if the contract, when made, was valid by the laws of a state as then expounded by all the departments of its government, and administered by its courts of justice, its validity and obligation

cannot be impaired by any subsequent act of the legislature, or decisions of its courts, altering the construction of the law.' Justice Harlan, delivering the opinion in *Taylor v. Ypsilanti,* 105 U. S. 71, quoting the above opinion with approval, says that this doctrine is no longer open to question in this court. 'It has been recognized for more than a quarter of a century, and is an established exception to the general rule that the federal courts will accept or adopt the construction which the state courts give to their own constitution and laws.' Several opinions are cited sustaining the view that the construction of the state statute, as far as contract rights acquired under it are concerned, becomes as much a part of the statute as the text itself; and a change of decision is to all intents and purposes the same in its effect on contracts as an amendment to the law by means of a legislative enactment, and the rights of the parties are to be determined according to the law as it was judicially construed to be when the bonds in question were put on the market as commercial paper."

## DUE PROCESS OF LAW GUARANTEED BY THE 14TH AMENDMENT TO THE U. S. CONSTITUTION VIOLATED.

Upon the giving of the money toward a home to the Pioneer Society and its acceptance and its further work to pay off the home and receive the money therefrom, the Pioneer Society acquired vested rights which could not be destroyed by taking its property away from it. Such taking was without due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

*Chicago M. & St. P. R. Co. v. Wisconsin*, 238 U. S. 491;
*Campbell v. Holt*, 115 U. S. 620;
*Noble v. Union River Logging R. R. Co.*, 147 U. S. 165.

A state may not impair its obligations. Any act which takes away any powers of franchises vested by the state in the charter of a private corporation or its corporate officers, or which restrains or controls the legitimate control or exercise of them, or transfers them to other persons without its assent is a violation of the obligations of that charter and is unconstitutional and void.

*Dartmouth College v. Woodward*, 4 Wheat. 518.

The principles enunciated in the *Dartmouth College* case are applicable here. Mrs. Stoltenberg had a right

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to believe that the money she gave to the Pioneer Society members and accepted by them for their benefit would not be divested to a society to which she didn't give it.

It is beyond the power of a legislature to invest the property of corporations exclusively in the state or dispose of it to such purpose as it may please without the consent or default of the corporators.

*Territt v. Taylor,* 9 Cranch. 43.

The original receipt of money in trust is a sufficient consideration for all the trustees' promises, express or implied, in reference to its final disposition.

*McKee v. Lamon,* 159 U. S. 317.

A state may not breach that obligation.

The rights of the Pioneer Society were determined by the law, in force, when it became into being and its charter. It was organized as a nonprofit corporation with seven members. It never was a "charitable corporation," which required a different directorate, and has an indefinite time of existence. That charter could not be altered by calling it a "charitable corporation."

*Chesapeak & O. R. Co. v. Miller,* 114 U. S. 176.

**Even under its reserved power to alter or amend a corporate charter, "the state cannot take the property of one corporation and turn it over to another."**

*Ohio v. Neff,* 52 Ohio St. 375, 28 L. R. A. 409, speaking of an eleemosynary (educational) corporation, cited in 7 Fletcher, Cyc. Corporations §3689, p. 849.

In the case cited, "Cincinnati College was the lawful owner of the property in its possession. It is immaterial whether it was acquired from Cincinnati Lancaster Seminary that it [the College] succeeded, or by subscriptions and donations subsequently made." Some courses of instruction as a "college" had been inaugurated and some were abandoned until only the law school was left, which had been in "uninterrupted existence of more than fifty years." The Ohio legislature then attempted to consolidate Cincinnati College into the University of Cincinnati "to exercise all the powers granted by law to the board of trustees of the Cincinnati College." The Supreme Court of Ohio said:

> "One ground, as we understand the argument of counsel, upon which this result is maintained to be lawful, is that the purpose to which this property was devoted by its original donors, is a public purpose, and that that circumstance alone is sufficient to impress upon the property a public character; but if that is not so, yet as the purpose of the donors was not private gain, but public charity, and as the property under the new corporation would be applied to the same purpose to which the Cincinnati College would have applied it, had the latter continued its administration, that therefore no substantial right, either of the orig-

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inal donors or of the corporation was violated by the law."

The Supreme Court of Ohio then characterized that argument thus:

> **"The results of establishing this doctrine would be to place every eleemosynary corporation within this state, whether religious, educational, or created to administer to the wants of the suffering or needy, beyond the limits of constitutional protection."**

To which it cited *Dartmouth College Trustees v. Woodward,* 4 Wheat. 518, and many other cases.

This *Ohio* case exactly parallels the *Pioneer* case, except that Pioneer Society was purely social and among its members benevolent. The ultimate judgment in the *Pioneer* case accepts all the results condemned as unconstitutional in the *Cincinnati* case.

The constitutional protection against deprivation of property without due process of law is available to persons arbitrarily deprived of their property rights by state action, whether under the guise of legislative authority or otherwise.

*Wagner v. Leser,* 239 U. S. 207.

The right of acquiring, possessing and protecting property is natural, inherent and inalienable.

*Van Horne v. Dorrance,* 2 Dall. 304.

No one can be deprived of his property without his assent except by processes of law.

*Western Union Telegraph Co. v. Davenport,* 97 U. S. 369;
*Tracy v. Ginzberg,* 205 U. S. 170;
*Truax v. Corrigan,* 257 U. S. 312.

The taking away of one man's property and giving it to another without due process of law is beyond the scope of constitutional authority.

*Osborn v. Nicholson,* 13 Wall. 654.

A corporation is a person under the Fourteenth Amendment to the Constitution of the United States which guarantees to persons the enjoyment of property or affords to them means for its protection or prohibits legislation or other conduct injuriously affecting it.

*Minneapolis & St. Louis R. R. Co. v. Herrick,* 127 U. S. 10;
*Missouri P. R. Co. v. Mackey,* 127 U. S. 205;
*Kentucky Finance Corp. v. Paramount Auto Exchange Corp.,* 262 U. S. 544.

The reserved right of a state to amend its corporate charters cannot be exercised so as to take the property of a corporation without due process of law.

*Chicago M. & St. P. R. Co. v. Wisconsin,* 238 U. S. 491.

The action of the State of California constitutes unconstitutional confiscation of Pioneer's property without due process of law.

## LACK OF PROCEDURAL DUE PROCESS OF LAW

The proceedings in this case were under the corporations code and the process of voluntarily winding up its affairs under court supervision. It is designated by California Statute as a special proceeding and is strictly statutory.

> *State Inv. & Ins. Co. v. Superior Court,* 101 Cal. 135.

Statutory Notice of the proposal to dissolve had been given to all parties by publication and to all members. None came in within the time fixed by law to protest. It was only after the proceeding was in progress and beyond any time fixed by law that the present appellee, through its attorneys, made its appearance in court to defeat the voluntary dissolution proceedings and distribution of assets under Section 9200 Corporation Code and implemented the Attorney General of the State into the case.

But the power of the Attorney General to intervene existed only insofar as he might be an onlooker as he might be of any corporation. *(Attorney General v. Soule,* 28 Mich. 153.) There was no statutory requirement that he be served or that he had any other rights except as an onlooker. If there was in fact a trust and

any deviation from the trust, all that he could do under the statute was ot seek to correct the deviation in the form and manner authorized by statute—not to seek to confiscate the assets of Pioneer Society and give them to another corporation.

Section 4691, Corporation Code.

If the corporation was a "charitable Corporation" it would be governed by Section 10207 of the Corporation Code, which also only gives the Attorney General the right to institute the proceeding *to correct* the noncompliance or departure.

Such proceedings are purely statutory and the measure of power is the statute itself, which must be read into the charter granted by the State of California to the Pioneer Society and which cannot be breached or impaired by the state through any of its agents without impairing the obligation of contract under Article I, Section 10, of the Constitution of the United States.

*State I and I Co. v. Superior Court,* 101 Cal. 135;

*Dartmouth College v. Woodward,* 4 Wheat. 518, 4 L. Ed. 629.

Where the question has been raised as to whether a contract obligation has been impaired under the Federal Constitution of the United States, the existence of the contract and nature and extent of its obligations become federal questions for the Supreme Court of the United States to decide and determine whether they are violative of the Federal Constitution.

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*Irving Trust Co. v. Day,* 314 U. S. 556, 561, 86 L. Ed. 452, 457, and cases cited therein.

Also, the question whether there has been procedural due process under the Fourteenth Amendment to the Constitution of the United States must be passed upon by this Honorable Court.

*Lisenba v. California,* 314 U. S. 266.

In the instant case, California law provides for a special proceeding for court supervision in the voluntary process of winding up corporate affairs, although a corporation does not need to have court supervision at all. In the instant case such court supervision was applied for and all the statutory steps taken—notice to members and creditors, publication of notice and the time within which anyone might complain or object. No one did so during the statutory period allowed by law. Thereafter, in the middle of the final proceedings, the Historical Society, through its attorneys, implemented the Attorney General to intervene. He could therefore proceed only under the authority of the statute which authorizes non-profit corporations to wind up and distribute their assets among their members or to revoke their intention to dissolve.

*State I. & I. Co. v. Superior Court,* 101 Cal. 135;
*Long v. Superior Court,* 102 Cal. 499;
*Smith v. Wakefield,* 88 Cal. 374, 378;
*Murray v. Superior Court,* 129 Cal. 628.

The Law of California regarding corporate dissolution is set out in *State I. & I. Co. v. Superior Court,* 101 Cal. 135, where the court said:

> "The jurisdiction of the Superior Court to decree a dissolution of any corporations exists only by virtue of statutory authority. It does not possess this authority by virtue of its inherent jurisdiction and equity . . . and as its jurisdiction is derived by its statute, it is limited by the provisions of the statute, both as to the conditions under which it may be invoked and the extent of the judgment which it may make in the exercise of this jurisdiction."

The provisions of the Corporation Code regarding winding up affairs of the corporation does not declare that such winding up and distribution shall be under the direction of the court or under the direction of any court, but merely "that its affairs shall be wound up and its effects distributed." (101 Cal. 147).

No provision of the California Code requires or even permits attorney-general intervention at this stage of the case. Such special proceedings are not equitable proceedings and the only statutory authority of the Attorney General to proceed is by a separate proceeding in the name of the state, in which he must give notice and an opportunity to be heard—the very first essentials of due process of law.

> *Dartmouth College v. Woodward,* 4 Wheat. 518, 4 L. Ed. 629.

In this case the Supreme Court of California held that by permitting the Attorney General to answer in the voluntary proceedings of winding up there had been a waiver of the statutory required notice, but intervention by the attorney general in any nonprofit corporation's affairs is permissible for the purpose of looking on, but not for the purpose of forfeiting property contrary to any statutory provisions or failing to give notice and an opportunity to correct any deviation.

The entire proceeding which followed was without warrant and authority of law and without any due process of law. The proceeding of the Attorney General did not seek to correct any noncompliance, as required by the statute, but sought to forfeit Pioneer's assets without previous notice and without previous opportunity to be heard and to turn its assets to the Historical Society. Such a proceeding, as stated by one of the California dissenting justices, was contrary to law, was contrary to justice, and was contrary to constitutional provisions.

## SUMMARY OF ARGUMENT

The Pioneer Society was organized as a *non-profit* corporation, with all the rights and privileges of a non-profit corporation. Its charter and its by-laws and the law of the state became a contract with the State of California which could not be impaired (Article I, Sec. 10, U. S. Constitution). The state could not change its character to a "charitable corporation" without impairing its contract with the society.

The life of the society was for fifty years. The contract was not only a contract with the State of California, but also a contract between the members of the society itself. Upon dissolution the state's contract provided that its assets were to be distributed among its members (Section 9200 Corporation Code). That contract could not be impaired, Article I Section 10 U. S. Constitution.

*Dartmouth College v. Woodward,* 4 Wheat. 518; 4 L. Ed. 629, 651;

*Brown v. Hummel,* 6 Pa. 86;

*Cary Library v. Bliss,* 151 Mass. 364; 25 N. E. 92;

*Louisville v. Louisville University,* 15 B. Mon. 642 (Ky.);

*Succession of Manney,* 171 So. 68; 185 La. 894;

*Adams v. Plunkett,* 175 N. E. 60; 274 Mass. 453;

*Breslev v. N. Y. & Queen Elect. Light & Power Co.,* 291 N. Y. S. 932; 249 App. Dis. 181, affirmed 7 N. E. 4708; 273 N. Y. 593;

*Allen v. Mckeen,* 1 Sumn. (U. S.) 776; 1 Fed. Case No. 229;
*New Orleans etc. R. Co. v. Harris,* 27 Mass. 517;
*Lothrop v. Stedman,* 13 Blatchf. (U. S.) 134, 15 Fed. Case No. 8519;
*Pennsylvania College Cases,* 13 Wall. 214; 20 L. Ed. 550.

In 1941, Mrs. Emma Wilhelmina Stoltenberg, a member of the society, gave $15,000.00 to her fellow members in the society, towards the specific purpose of acquiring a home for the Los Angeles County Pioneer Society members. The gift was accepted by the Los Angeles County Pioneer Society members at that time upon that basis. It was a contract between Mrs. Stoltenberg and the society members, that it would be used toward that specific purpose. She did not intend it to go to some other society. The Pioneer Society, with her knowledge and consent, purchased a building at 746 South Figeuroa Street, in the city of Los Angeles, State of California. The building cost approximately $30,000.00, had a mortgage on it of $10,500.00. Mrs. Stoltenberg gave another $5,000.00 in 1942, which went toward the purchase of this building. The property had an income which was utilized by the society and its fellow members for profit, as an incident to its main purpose in maintaining a social hall for its members on the second floor of the two-story building. That contract could not be impaired. Article I, Section 10 U. S. Constitution.

Mrs. Stoltenberg knew each of the members of the society, who were less than a hundred in number; its hall was not open to the public or any other society or group; and the downstairs of the property was rented out at a profit. As Justice Cardoza once said, operating business at a profit is not charity.

Section 9200 of the Corporations Code of the State of California provided that the carrying on of a business at a profit incidental to the main purposes of a corporation and the distribution of assets to members, on dissolution, shall not be deemed forbidden to non-profit corporations.

This section of the Code was a part of the contract between Mrs. Stoltenberg and the society at the time she made her gifts. This contract could not be impaired. Article I, Section 10 U. S. Constitution.

The law of the State of California as it existed at the time, as construed by the courts previous to that time, provided that if a trust failed, the reversionary rights went to the heirs. (*People v. President & Trustees of College of Calif.*, 38 Cal. 166, 174; *Victoria Hospital Assn. v. All Persons,* 169 Cal. 455, 464.) If the property was actually held in trust and the trust failed the money would have to go to her heirs. This contract could not be impaired by a later construction. Article I, Section 10 U. S. Constitution.

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## DUE PROCESS OF LAW

The due process of law guaranteed by the 14th Amendment to the Constitution of the United States protected the Pioneer Society from the taking of its property. It was entitled, under the statutes and under the agreement between the State of California and the society, to thirty days notice for any alleged deviation. The measure of power of the Attorney General and of the State was to give notice to correct the deviation, after a final determination that there was a deviation—not to forfeit the property. The taking of the property from Pioneer constituted a forfeiture, and constituted a taking of Pioneer's property in violation of due process of law guaranteed by the 14th Amendment to the Constitution of the United States. The property of a non-profit society is protected equally with that of any other corporation or person from illegal, arbitrary and capricious taking.

In any event, the Pioneer Society had the right, under Section 4608 of the Corporations Code, to revoke its intention to dissolve and to be restored to its money. The Pioneer Society has never been dissolved and has revoked its intention to dissolve (Section 4608 Corporation Code of California). The right to take its money in any event would depend upon its actual dissolution. (Sec. 9801 Corporation Code). A taking prior to dissolution is violative of due process of law guaranteed by the 14th Amendment to the Constitution of the United States and is "legalized larceny" when done by a court decree.

The dissenting opinions of Justices Carter and Schauer of the Supreme Court of California further set forth our position on this matter most ably. We therefore quote them here:

"CARTER, Justice (dissenting).

I dissent.

I cannot agree that Pioneer was a charitable organization. The Los Angeles County Pioneer Society was organized in 1897 as an unincorporated association. In 1910, it was incorporated as a nonprofit corporation under the existing laws of this state. At the time of incorporation, section 593 of the Civil Code provided that 'A nonprofit corporation may be formed by any number of persons, not less than three, for any lawful purposes such as religious, charitable, *social, educational, recreational,* cemetery or for rendering services, which do not contemplate the distribution of gains, profits or dividends to the members thereof, and for which individuals lawfully may associate themselves, subject to laws and regulations applicable to particular classes of nonprofit corporations or lines of activity. *The carrying on of business at a profit incidental to the main purposes of the corporation and the distribution of assets to members on dissolution shall not be deemed forbidden to non-profit corporations.*' (Emphasis added.) Its Articles of Incorporation provided '*That the purpose for which this corporation is formed is to cultivate social intercourse and friendship among its members,* to collect and preserve data touching the early history of Los Angeles County and the State of California, to collect and preserve articles, spec-

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imens and material things illustrative or demonstrative of the customs, modes and habits of the aforesaid times in said State; to perpetuate the memory of those who, by their labors and heroism, contributed to make the history of said County and State; and in furtherance of said purpose, to receive, purchase, sell, hold, convey, lease, rent and maintain all kinds of property, both real and personal; to build club houses, and to do any and all other acts necessary and convenient for the promotion of the aforesaid purpose; *and to exist as a social corporation under the provisions of the laws of the State of California,* covering such corporations, and not for pecuniary profit." (Emphasis added.) It was also provided that the corporation should exist for a period of fifty years.

Over the years, membership in the organization decreased until in 1941 there were less than 100 members; at the time of this action there were approximately 58 members still living. It would appear to be clear that the Pioneer Society was organized by a group of people who were brought together by their common interest in the history and historical relics of Los Angeles County and the State and that their purpose in so organizing was to enjoy each other's companionship, to exchange reminiscences and information. In Bogert, Trusts and Trustees (Vol. IIA, Sec. 380, pp. 182, et seq.) it is pointed out that 'Gifts to provide social enjoyment for the members of a private club or other limited group have been held not to be charitable. Probably this is on account of the narrowness of their effect, rather than on account of the nature of the benefits to be derived. Good conversation,

eating and drinking together, the playing of games, music, and other entertainment no doubt add to the pleasure of life and to some extent maintain health. A gift for a clubhouse where *all* citizens of the community might have such social intercourse has been held charitable. But donations for the support of private or limited organizations of a similar type are lacking in the breadth of influence necessary to give them a public or charitable character.' (Emphasis added.) In 1947, it was held in England that a trust to pay income to maintain an institute in London for people of Welsh descent where lectures, study, entertainment, recreation and refreshment could be obtained, for the purpose of promoting the moral, social, spiritual and educational welfare of the Welsh people, is not devoted solely to charitable purposes (Trustees of Sir Howell Jones Williams' Trusts v. Inland Revenue Commissioners, 1 All. Eng. R. 513).[2]

The members of the Pioneer Society held meetings, gave picnics for themselves, held a meeting honoring the memory of the pioneers who discov-

[2]Also see the following cases on the point:
*Teele v. Bishop of Derry*, 1897, 47 N.E. 422, 168 Mass. 341, 38 L.R.A. 629, 60 Am. St. Rep. 401;
*Gladding v. St. Matthews Church*, 1904, 57 A. 860, 25 R. I. 628, 65 L.R.A. 225, 105 Am. St. Rep. 904;
*Shannep v. Strong*, 1945, 160 P. 2d 683, 160 Kan. 206;
*State Bank & Trust Co. v. Vandyke*, 1949, 223 S.W. 2d 750, 311 Ky. 202;
*Grebenstein v. St. John's Evangelical Lutheran Church of Union City*, 1949, 66 A. 2d 461, 3 N. J. Super. 422;
*In re Gault's Estate*, Sur. 1944, 48 N. Y. S. 2d 928;
*In re Jones' Estate*, 1952, 108 N. Y. S. 2d 812, 201 Misc. 881;
*Re Wright*, (1938) 2 Dom. L. R. 752;
*Fisher v. Minshall*, 1938, 78 P. 2d 365, 102 Colo. 154;
*Waterbury Trust Co. v. Porter*, 1944, 38 A. 2d 598, 131 Conn. 206;
*Fidelity Union Trust Co. v. Laise*, 1948, 60 A. 2d 250, 142 N. J. Eq. 366;
*Craft v. Shriver*, 1947, 74 N. E. 2d 589, 81 Ohio App. 253;
*In Matter of Lyon*, 1916, 159 N. Y. S. 951, 173 App. Div. 473;
*Rohlff v. German Old People's Home*, 1943, 10 N.W. 2d 686, 143 Neb. 636;
*Green v. Parker*, 1943, 32 A. 2d 316, 92 N. H. 419, noted in 42 Mich. L. Rev. 323.

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ered gold in California, erected a plaque to commemorate the site of the first school building at Inglewood, California, discussed the pioneers of California and (according to the majority opinion) 'recollected' the activities of those pioneers. According to Webster (Int. Dict. 2d ed.) the word recollect means 'to recover or recall the knowledge of; to call to mind; to remember.' Taking into consideration the average age of 75 years of the members of Pioneer, it seems logical to assume that they were the children of these pioneers to whom they paid tribute and that their purpose in honoring them was not for the benefit of society at large, but to honor their own ancestors as well as to consolidate their fast dwindling ranks for their own social benefit. An organization of canary fanciers, rose horticulturists, or of those interested in purebred cattle, or purebred Irish Setters, or an association of breeders of Palomino horses could hardly be called charitable organizations even though an incidental benefit might be said to result to society at large, or that portion of society also interested in the particular subject. Groups of people vitally interested in the same subject matter enjoy each other's company because of that interest and often form organizations to discuss, socially, their common interests. Any educational features of any of these organizations is primarily intended for their own benefit, not for the benefit of the general public although non-members may improve their knowledge through the efforts of the organization. Such general benefit is purely incidental, however, to the primary purpose of the organization. I am convinced that this is the sit-

uation we have here. Mrs. Stoltenberg's first gifts to Pioneer, of which she was a member, were to enable the organization to purchase a building in which to hold its meetings which she attended; her last gift, by will, was to enable her fellow-members and friends to continue their meetings and social events. It is interesting to note that Historical, the organization appointed to act as trustee, was an organization existing at the same time as Pioneer during Mrs. Stoltenberg's lifetime. Had she desired Historical to have the benefit of her gifts, undoubtedly she knew of its existence and could have interested herself therein; had she desired only to benefit the people of this State though the collection of historical data and relics, undoubtedly she would have made gifts to both organizations. To my mind, her membership in Pioneer and her gifts to that organization, clearly support the social character of Pioneer. Another point clearly supporting the social character of the organization is that neither outsiders nor members of the general public were admitted to the meetings of the society. If an organization is intended to benefit the general public, surely the general public should be admitted to meetings for its benefit.

In Abalian v. Townsend Social Center, 112 Cal. App. 2d 441, 246 P. 2d 965, it was held that a social center whose articles of incorporation disclose that its purpose was to acquire a club building for the convenience of its members and other persons interested in the old age pension movement was a non-profit corporation for the benefit of its members, and not a charitable corporation holding assets charged with a public trust. In Estate of Dol,

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186 Cal. 64, 198 P. 1039, (a case holding Pioneer a charitable organization) it was pointed out that if the 'only' object of an organization were to cultivate social intercourse and friendship among its members, it would be for the benefit of the members alone and would not be a charitable organization. I can not agree that an organization may not be organized for social purposes with a common interest in an educational program without being classified as a charitable organization. In Estate of Dol, 182 Cal. 159, 163, 187 P. 428, 430 (involving the French Hospital in Los Angeles), it was held that 'One of the essential features of a charitable use is that it shall be for the public benefit, either for the entire public or for some particular class of persons, indefinite in number, who constitute a part of the public. The persons to be benefited must consist of "the general public or some class of the general public indefinite as to names and numbers." Estate of Coleman, 167 Cal. [212] 214, 138 P. [992] 993, Ann. Cas. 1915C, 682; Estate of Lennon, 152 Cal. 327, 92 P. 870, 125 Am. St. Rep. 58, 14 Ann. Cas. 1024.' Here, the members of Pioneer were definite and known. Here, as in Estate of Dol, supra, 182 Cal. 159, 187 P. 428, no one was entitled to the benefits of the society except those who became admitted as members and paid their dues. It was there held, in line with Stewart v. California Medical etc. Ass'n, 178 Cal. 418, 419, 176 P. 46, 47, that 'the declaration in the articles alone are insufficient to establish the character of the St. Helena Hospital as a public charity, and the evidence of the manner it was conducted shows that it was not' and 'The character of the institution is

to be determined, not alone by the powers of the corporation as defined in its charter, but also by the manner of conducting the hospital.' That statement is pertinent here. I have heretofore shown that this organization was conducted for the benefit of the members alone; that its meetings were not open to the public; that its primary purpose was the social benefit to be derived by the members from their association with each other. In Estate of Henderson, 17 Cal. 2d 853, 857, 112 P. 2d 605, 607, this Court said 'A bequest is charitable if: (1) It is made for a charitable purpose; its aims and accomplishments are of religious, educational, political or general social interest to mankind. People [ex rel. Ellert] v. Cogswell, 113 Cal. 129, 45 P. 270, 35 L. R. A. 269; Estate of Merchant, 143 Cal. 537, 77 P. 475. (2) The ultimate recipients constitute either the community as a whole or an unascertainable and indefinite portion thereof. People [ex rel. Ellert] v. Cogswell, supra; Estate of Hinckley, 58 Cal. 457; Fay v. Howe, 136 Cal. 599, 69 P. 423. The charitable nature of an institution is determined on the same basis.' See In re La Societe Francaise etc. Mutuelle, 75 Cal. App. 2d 770, 171 P. 2d 544.

In summary, and in applying the tests laid down in Estate of Henderson, supra, 17 Cal. 2d 853, 112 P. 2d 605, (1) Pioneer's aims were to promote the social life of its members through their common interest in California history; (2) The ultimate recipients of any benefits to be derived from the organization were the members in good standing of the organization, not the community

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as a whole or an unascertainable and indefinite portion thereof.

In a non-profit corporation existing for the private benefit of its members, upon dissolution assets are distributed among the members Corp. Code, §9801; Brown v. La Societe Francaise, 138 Cal. 475, 477, 71 P. 516; Abalian v. Townsend Social Center, 112 Cal. App. 2d 441, 449, 246 P. 2d 965, 168 A. L. R. 956. This, I believe, is the result which should be reached here. It seems quite apparent that Pioneer was a non-profit organization existing for the private benefit of its members who should, upon dissolution, receive a distributive share of the assets held by Pioneer.

Assuming, however, only for the purposes of the following argument that Pioneer is a charitable organization, I see no valid reason why it should not be able to correct its deviation from its articles of incorporation. In other words, why should not Pioneer be permitted to continue to operate as a society and to revoke its former petition to dissolve the corporation? It is admitted in the majority opinion, that Pioneer's 'abandonment of its trust was brought to light in the dissolution proceeding.' Section 4691 of the Corporations Code provides that 'if the cause of action is a matter or act which the corporation has done or omitted to do that can be corrected by amendment of its articles or by other corporate action, such suit *shall be maintained unless* (a) the Attorney General, at least 30 days prior to the institution of suit, has given the corporation *written notice* of the matter or act done or omitted to be done, and (b) *the corporation has failed, neglected, or refused to institute proceed-*

*ings to correct it within the 30-day period* or thereafter fails to prosecute such proceedings.' (Emphasis added.) The majority calls attention to the fact that during the time intervening after the interlocutory judgment, the order appealed from and the affirmance by the District Court of Appeal, Pioneer's attention was repeatedly called to its status as a charitable organization. No mention is made of the fact that there was still to be made a determination by this Court. In the event that this Court had not decided that Pioneer was a charitable organization, it would have had the right to dissolve and distribute its assets among its members. Why then, should it not be given notice after the final determination has been made, that it must conform to its articles or that a successor trustee will be appointed? It is interesting to note that the title of section 4691 is 'Conditions precedent: Notice affording opportunity for corrective action.' The majority states that under section 10207 of the Corporations Code, the Attorney General has power to obtain the appointment of a successor trustee and that "there is nothing therein limiting the power of the Attorney General to cases where the assets of the charitable corporation have been distributed." The assets involved here have not been distributed but have been impounded pending the final determination of the issues involved. Section 10207 provides that 'Each such [charitable] corporation shall be subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from

the general purpose for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to *correct* the non-compliance or departure. Except as specially approved by the Attorney General such a corporation shall not accumulate income for a period longer than five years.' (Emphasis added.) The section provides for 'correction' of a noncompliance or departure; it does not prohibit a self-correction by the erring corporation. If Pioneer terminates its dissolution proceedings, and continues as it has done in the past, then, under the view taken by the majority of this Court, it will be carrying on its charitable purposes and there is no reason why a successor trustee should be appointed to administer Pioneer's funds. No authority is cited for the proposition that Pioneer may not be permitted to correct its deviation from its articles by withdrawing or revoking its dissolution proceedings nor have I found any such authority. The Restatement of Trusts (§ 392) provides that (comment a) 'A suit in equity can be maintained by the Attorney General to compel the trustees of a charitable trust to perform their duties or trustees, or to enjoin them from committing a breach of trust, or to compel them to redress a breach of trust, or to appoint a receiver to take possession of the trust property; or to remove the trustees and appoint other trustees.' There are, thus, several remedies other than the appointment of a successor trustee.

There was no bad faith on the part of the Pioneer in voting to dissolve the corporation. It filed an action in declaratory relief and obtained a

judgment to the effect that no trust of any kind was impressed upon its assets; it voted to dissolve and then petitioned the superior court for judicial supervision of the dissolution; it agreed that the Attorney General might file a petition in intervention. Under the circumstances presented and in view of the fact that the applicable statutes do not prevent it, there appears to be no sound reason why Pioneer should not be permitted to revoke its dissolution proceedings and carry out the trust imposed by its articles since it is finally adjudged to be a charitable organization.

I would, therefore, reverse the judgment."

SCHAUER, J., concurs.

On Petition for Rehearing

Rehearing Denied

"CARTER, Justice (dissenting).

CARTER and SCHAUER, JJ., dissent.

I dissent from the order denying appellant's petition for rehearing and in view of the contention of appellant in said petition that the effect of the decision of this Court is to deprive it of its property without due process of law, I am constrained to comment on this contention.

**The record in this case presents one of the most outrageous examples of legalized larceny which has come under my observation.**

The Pioneer Society was organized as an unincorporated association; the evidence shows clearly, and without contradiction, that it was intended to be, and was, a purely social organization. As such an unincorporated association and social or-

ganization, it had the right, upon dissolution, to distribute its assets among its members.

The record discloses that Pioneer has acted with the utmost good faith throughout. In the first instance, Pioneer sought a judicial determination of its charitable, or social, status. The first judicial determination was that it was a non-profit, non-charitable organization. A later judicial determination by the same court held it to be a charitable organization. Pioneer then sought to abandon its dissolution proceedings and, in accordance with the last judicial determination, carry on as a charitable organization. This it has not been permitted to do. A majority of this Court has declared that Pioneer is a charitable organization and that it may not be permitted to correct its so-called deviation from its articles of incorporation; that its assets must be turned over to a successor trustee—the Historical Society. As I pointed out in my dissenting opinion, this is a clear violation of the statutory provisions involved, which permit *corrective* action by a charitable organization which has deviated from its articles. Even if Pioneer is a charitable organization (which I am firmly convinced it is not) it has the right to abandon its dissolution proceedings and correct any deviation from its articles of incorporation. To refuse to permit such corrective action is, in my opinion, to deprive Pioneer of its property without due process of law under both the federal and state constitutions.

With respect to corporations, this Court is empowered only to apply the statutory law of the

state as it was written by the Legislature; it is not empowered to ignore the statutory provisions relating to corporations and effect a distribution of corporate assets as its collective whim may dictate.

For the reasons stated herein, and in my dissenting opinion, I would grant a rehearing and reverse the judgment."

"SCHAUER, Justice (dissenting).

I concur generally in the reasoning and conclusion of Justice CARTER. Particularly do I find no justification whatsoever for refusing to permit Pioneer to take the corrective action which it could not know it should take until this court had ruled that it could not rely on the prior final judgment or its charter from the state.

Pioneer, by its articles of incorporation and the laws of California was not a charitable corporation; it never intended or pretended to be a charitable corporation; it paid taxes as a non-charitable corporation; it was adjudicated not to be a charitable corporation. With that background it instituted a proceeding for dissolution as it had a right to do. Its every act shows the good faith of the fine citizens composing it. Now this court rules that it is a charitable corporation and in the same judgment punishes Pioneer for instituting the lawful dissolution proceeding by stripping it of its assets and giving them to another; it refuses even to permit Pioneer, despite the authorization of the statute, to discontinue the dissolution proceeding and to carry out the trust which the court adjudges to exist.

Such action in my view is contrary to fact, to justice, to reason and to constitutional guarantees."

Pioneer Society, which had by its gifts and its earnings, and successful management, almost $100,000 a year ago, and had money for its social meetings and banquets, now finds itself in the anomalous and unusual position of being stripped naked of its hall, its money, and its use for its purposes, even its legal protection, and as poor as a church mouse without even a church to go to because it asked the court of the State of California what it could do, and followed that court's judgment in construing California's Corporation statutes as they applied to its charter and to it.

And it finds that its wealth, part of which it received from one of its members and the rest which it created by its own efforts and successful business operations is about to be turned over to a society (which sought unsuccessfully to infiltrate into it and merge with it) by a process which one Justice of the Supreme Court of California calls "legalized larceny" and another says is "contrary to fact, to law, to justice, to reason and to *constitutional* guarantees."

Surely, the Constitution of the United States, under whose protective guarantees, the society unsuccessfully sought refuge in the state courts, will protect and preserve Pioneer's rights in this Honorable Court.

We believe that under the foregoing facts and law that Pioneer Society would have a right of appeal;

and that *certiorari* should be granted virtually as a matter of right to review and reverse the judgment and orders of the California Supreme Court by which the obligations of contract have been impaired through the construction and application of Section 9801 Corporation Code in violation of Article I Section 10 of the Constitution of the United States and by which its property is being taken from it in violation of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

We pray for the granting of *certiorari* and the reversal of the orders below.

Respectfully submitted,

MORRIS LAVINE,
*Attorney for*
*Los Angeles County Pioneer Society.*

[TITLE OF COURT AND CAUSE.]

## MOTION FOR LEAVE TO PROCEED ON THE TYPEWRITTEN RECORD

Comes now the Petitioner, the Pioneer Society, and respectfully petitions this honorable court for leave to proceed upon the typewritten record for the reason that the California court has impounded all its assets and ordered them turned over to the Historical Society, and it is without funds.

Respectfully submitted,
MORRIS LAVINE,
Attorney for Petitioners.

# Appendix

# Appendix

# APPENDIX A

At a meeting of the Board of Directors of the LOS ANGELES COUNTY PIONEER SOCIETY, held at Los Angeles, California, on January 21st, 1953, the following resolution was adopted:

RESOLUTION

WHEREAS the Board of Directors of the Los Angeles County Pioneer Society, consisting of many prominent persons who have resided in Los Angeles County for thirty years or more, elected in 1948 to wind up and dissolve the corporation and distribute its assets among its members, pursuant to Section 9800 and 9801 of the Corporation Code of California, and

WHEREAS, court proceedings were theretofore commenced to determine its right to wind up its affairs and dissolve the corporation and a suit in declaratory relief was filed in order that the members of the society might properly and regularly determine whether its funds were charitable or non-charitable and whether it could or could not distribute its funds to its members, and

WHEREAS, a judge of the Superior Court, to-wit, Judge Myron Westover, held that it was proper to dissolve the corporation and distribute its assets among its members, and

WHEREAS, that right was subsequently attacked in another court proceeding and that right questioned, and

WHEREAS, the members of the society being law abiding and all of them desiring to carry out the purposes of the society in accordance with their

charter and by-laws and desiring only court supervision of those rights, and

WHEREAS, when another judge of the Superior Court ruled that its members had no right to distribute its assets to the members upon dissolution but that the funds were charitable funds, and

WHEREAS, the members of the Board of Directors of the society, on February 28, 1950, met and decided at that time to authorize its attorney to withdraw its election to wind up and dissolve the society and to permit the society to continue and to carry out all its purposes, and

WHEREAS, the society believes that in the best interests of its members and to maintain its outstanding reputation over many years of carrying on its work in accordance with its charter and by-laws, and

WHEREAS, the members now assembled have regularly met since 1949 and intend to continue to meet until its charter finally expires.

NOW THEREFORE, be it resolved by the Board of Directors of the Los Angeles County Pioneer Society that it revokes its election to wind up and dissolve the corporation.

BE IT FURTHER RESOLVED that the Directors now declare that no assets have been distributed pursuant to the election.

BE IT FURTHER RESOLVED that the election to revoke its winding up and dissolution is by the unanimous vote of the Board of Directors of the Los Angeles County Pioneer Society.

BE IT FURTHER RESOLVED that the court be petitioned to return to the Los Angeles

County Pioneer Society all its funds which have been impounded in trust so that it may continue to function as heretofore.

FRANK Y. PEARNE
President
PHILIP McANANY
Secretary

Jan. 21st, 1953.
F. Y. P.

(SEAL)

STATE OF CALIFORNIA,
County of Los Angeles.—ss.

On this 23d day of January, A. D., 1953, before me, Verona Taft, a Notary Public in and for said County and State, personally appeared Frank Y. Pearne, known to me to be the President, and Philip McAnany, known to me to be the Secretary of the Los Angeles County Pioneer Society, the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument, on behalf of the Corporation herein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

VERONA TAFT
Notary Public in and for said County and State.

My Commission Expires Apr. 5, 1956.
(SEAL)

## APPENDIX B

### STATUTES INVOLVED

California Corporation Code, Section 9800.

"9800. A non-profit corporation may dispose of all or substantially all of its assets, or may be wound up or dissolved, or both, in the same manner and with the same effect as a stock corporation, under the General Corporation Law."

Corporation Code, Section 9801.

"9801. Upon dissolution or winding up of a non-profit corporation, after paying or adequately providing for the debts and obligations of the corporation, the directors or persons in charge of liquidation shall divide any remaining assets among the members in accordance with their respective rights therein, or dispose of them in such other manner as may be provided in the articles unless the corporation holds its assets on any trust.

If the corporation holds its assets on trust, the assets shall be disposed of in such manner as may be directed by decree of the superior court of the county in which the dissolved corporation had its principal office, upon petition therefor by the Attorney General or any person concerned in the liquidation.

This section does not apply where the charter of an incorporated subordinate body is surrendered to, taken away, or revoked by the head or national body."

Corporation Code, Chapter 1, General Provisions.

"9000. This part shall be known and may be cited as the General Non-profit Corporation Law."

"9001. The provisions of this part apply to every non-profit corporation now existing or hereafter formed, unless the corporation is expressly exempted from the operation thereof, or there is a special provision applicable to the corporation inconsistent with the provisions of this part, in which case the special provision prevails."

"9002. The provisions of the General Corporation Law, Division 1 of this title, apply to corporations formed under this part, except as to matters specifically otherwise provided for in this part."

Corporation Code, Section 9200.

"9200. A non-profit corporation may be formed by three or more persons for any lawful purposes which do not contemplate the distribution of gains, profits, or dividends to the members thereof and for which individuals lawfully may associate themselves, such as religious, charitable, social, educational or cemetery purposes, or for rendering services, subject to laws and regulations applicable to particular classes of non-profit corporations or lines of activity. Carrying on business at a profit as an incident to the main purposes of the corporation and the distribution of assets to members on dissolution are not forbidden to non-profit corporations, but no corporation formed or existing under this part shall distribute any gains, profits or dividends to any of its members as such except upon dissolution or winding up."

. . .

Corporation Code. Part 9. Winding Up and Dissolution. Chapter 1.

"4600. Any corporation may elect to wind up its affairs and voluntarily dissolve by the vote or written consent of shareholders or members representing 50 per cent or more of the voting power."

"4603. Whenever a corporation has elected to wind up and dissolve a certificate evidencing such election shall be forthwith filed in the office of the Secretary of State and a copy thereof, certified by the Secretary of State, shall be filed in the office of the county clerk of the county in which the principal office of the corporation is located.

The certificate shall be signed by the president or vice president and the secretary or assistant secretary, or by at least a majority of the directors, or by one or more shareholders or members authorized to do so by shareholders or members holding or representing at least 50 per cent of the voting power, and verified by their affidavit stating, in effect, that the matters set forth in the certificate are true of their own knowledge, and shall set forth:

(a) That the corporation has elected to wind up and dissolve.

(b) If the election was made by the vote or written consent of shareholders or members, the number of shares or memberships voting for or consenting to the election and the total number of outstanding shares or memberships the holders of which were entitled to vote on or consent to the election.

(c) If the certificate be executed by shareholders or members as such, that the subscribing shareholders or members were authorized to execute the certificate by shareholders or members holding or representing 50 per cent or more of the voting power."

"4604. Voluntary proceedings for winding up the corporation are deemed to commence upon the adoption of the resolution of shareholders or directors of the corporation electing to wind up and dissolve, or upon the filing with the corporation of the written consent of shareholders thereto. However, if such proceedings are instituted because of the expiration of the terms of corporate existence or other dissolution of the corporation, the proceedings for winding up are deemed to commence at the date of termination of its corporate existence."

"4605. When a voluntary proceeding for winding up has commenced, the corporation shall cease to carry on business except to the extent necessary for the beneficial winding up thereof. The Directors forthwith shall cause written notice of the commencement of the proceeding for voluntary winding up to be given by mail to all shareholders and to all known creditors and claimants whose addresses appear on the records of the corporation."

. . .

"4606. A voluntary election to wind up and dissolve may be revoked prior to distribution of any assets by the vote or written consent of shareholders or members representing no less than a

majority of the voting power, or by resolution of the board of directors if the election was by the directors pursuant to Section 4601. Thereupon a certificate evidencing the revocation shall be subscribed, verified and filed in the manner prescribed by Section 4603.

The certificate shall set forth:

(a) That the corporation has revoked its election to wind up and dissolve.

(b) That no assets have been distributed pursuant to the election.

(c) If the revocation was made by the vote or written consent of shareholders or members, the number of shares or memberships voting for or consenting to the revocation and the total number of outstanding shares or memberships the holders of which were entitled to vote on or consent to the revocation.

(d) If the election and revocation was by resolution of the board of directors it shall be so stated."

. . .

"4618. The jurisdiction of the court includes the revocation of the election to wind up and dissolve by the shareholders, and the making of orders for the withdrawal and termination of proceedings to wind up and dissolve, subject to conditions for the protection of shareholders and creditors."

. . .

"4690. The Attorney General may bring an action against any corporation or purported corporation, in the name of the people of this State

upon his own information, or upon complaint of a private party, to procure a judgment dissolving the corporation and annulling, vacating, or forfeiting its corporate existence upon any of the following grounds:

(a) The corporation has seriously offended against any provision of the statutes regulating corporations.

(b) The corporation fraudulently has abused or usurped corporate privileges or powers.

(c) The corporation has violated any provision of law by any act or default which under the law is a ground of forfeiture of corporate existence."

"4691. However, if the cause of action is a matter or act which the corporation has done or omitted to do that can be corrected by amendment of its articles or by other corporate action, such suit *shall not* be maintained unless (a) the Attorney General, at least 30 days prior to the institution of suit, has given the corporation written notice of the matter or act done or omitted to be done, and (b) the corporation has failed, neglected, or refused to institute proceedings to correct it within the 30-day period or thereafter fails to prosecute such proceedings."

. . .

Corporation Code. Part 3. Corporation for Charitable or Eleemosynary Purposes. §§10200-10207.

"10200. Twenty-five or more persons may organize a non-profit corporation for the purpose of receiving, acquiring, holding, managing, adminis-

tering, or expending property and funds for charitable and eleemosynary purposes, including the assistance and support of charitable and eleemosynary institutions, associations, and undertakings."

"10201. The articles of incorporation of each such corporation shall set forth:

(a) Its name.

(b) That it is a non-profit corporation organized *solely* for general charitable and eleemosynary purposes under Part 3 of Division 2 of Title 1 of the Corporation Code.

(c) The county of this State where the principal office for the transaction of the business of the corporation is located.

(d) The number of trustee, which shall be not less than 9 nor more than 25; their terms of office, which shall not exceed six years; and how they are to be chosen.

(e) The names and residence of the members of the first board of trustees.

(f) Any other matter required by law to be set out in the articles of incorporation."

. . .

"10206. Each such corporation, as an incident of its purpose and without any necessity for expressing them in its articles of incorporation, may exercise the following powers in full measure without the necessity of obtaining any court order of authorization, approval, or confirmation:

(a) To act as trustee under charitable and eleemosynary trusts, receiving, holding, managing, administering, and expending property and funds

in accordance with the respective trusts upon which the property and funds are acquired and held.

(b) To receive, hold, manage, administer, and expend property and funds upon the general charitable and eleemosynary trust that the property and funds, either as to principal or income or both, shall be applied to the assistance and support of such charitable or eleemosynary institutions or objects, at such times, and to such extent as the corporation may in its judgment deem most conducive to the public welfare. No bequest, devise, gift, or transfer of property or funds to such a corporation for a charitable or eleemosynary purpose is invalid because of indefiniteness or uncertainty as to the purposes or the beneficiaries thereof, but, to the extent to which such indefiniteness or uncertainty exists, it shall be resolved by the corporation in the manner which, in its judgment, is most consonant with the purpose of the donor and most conducive to the public welfare."

"10207. Each such corporation shall be subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purpose for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure. Except as specifically approved by the Attorney General such a corporation shall not accumulate income for a period longer than five years."

# APPENDIX C

Office of the Secretary

Organized Sept. 4, 1897

CASE NO. 562960
Deft. Exhibit D
Filed Feb 8 1950

HAROLD J. OSTLY,
County Clerk
By F. W. HUNTER
Deputy

LOS ANGELES COUNTY PIONEER SOCIETY
Los Angeles, California
January 9, 1941

Miss Emma Wilhelmina Stoltenberg
921½ West First Street
Los Angeles, California

My Dear Miss Stoltenberg:

The Honorable Board of Directors of the Los Angeles County Pioneer Society have directed me, in their names, to personally thank you for your most gracious gift, which will greatly aid the Pioneer Society, of which you are a beloved life member, towards the purchase of a home to be known as "The Stoltenberg Home of Los Angeles County Pioneer Society".

In this, you and all of our members will have reason to be justly proud.

Sincerely yours,
EDITH N. O'SHEA
SISTER EDITH O'SHEA
Financial Secretary
1810 So. Menlo Ave.

# APPENDIX D

COPY

July 20, 1948

Mr. Mno Pierce
c/o M. Pierce & D. A. Smith Mortuary
925 W Washington Street
Los Angeles 15, California

Dear Sir:

Re: Los Angeles County Pioneers Society

Receipt is acknowledged of your letter of July 17 requesting whether a non-profit corporation may distribute a portion of its assets to its members.

We adhere to the previous view expressed by us which is referred to in the opinion accompanying your letter; namely, that a corporation formed under the General Non-Profit Corporation Law may not distribute its assets to its members unless the corporation is in the process of winding up and dissolution.

It is suggested that injunction would be the proper remedy to prevent the directors from making an improper distribution.

Yours very truly,
FRANK M. JORDAN, Secretary of State
by:
Charles F. Going, Counsel and Deputy.

CFG:eal

## APPENDIX E

Filed 1949 Apr 27 PM 12:51
HAROLD J. OSTLY
Los Angeles County Clerk
By: D. WIENEKE
Deputy

WILLIAM J. HANLON
1216 Continental Building
Los Angeles 13, California
Mutual 6078
Attorney for Plaintiff.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

| | | |
|---|---|---|
| LOS ANGELES COUNTY PIONEER SOCIETY, a corporation, | ) | |
| Plaintiff, | ) | No. 559035 |
| --vs-- | ) | COMPLAINT |
| MNO PIERCE, | ) | (Declaratory Relief) |
| Defendant. | ) | |

COMES now the plaintiff in the above entitled action, and for cause of action alleges:

I.

That said plaintiff, LOS ANGELES COUNTY PIONEER SOCIETY, is a corporation organized and existing under and by virtue of the laws of the State of California; that its principal place of business is in the City of Los Angeles, County of Los Angeles, State of California.

II.

That defendant, MNO PIERCE, is a member of the Los Angeles County Pioneer Society, a corporation, the plaintiff herein.

III.

That the articles of incorporation of said Los Angeles County Pioneer Society, state the purpose for which it is formed as follows:

> "That the purpose for which this corporation is formed is to cultivate social intercourse and friendship among its members, to collect and preserve data touching the early history of Los Angeles County and State of California, to collect and preserve articles, specimens and material things illustrative or demonstrative of the customs, modes and habits of the aforesaid times in said state; to perpetuate the memory of those who, by their labors and heroism, contributed to make the history of said county and state; and in furtherance of said purpose to receive, purchase, sell, hold, convey, lease, rent and maintain all kinds of property, both real and personal, to build club houses,

and to do any and all acts necessary and convenient for the promotion of said purposes; and to exist as a social corporation under the provisions of the laws of the state of California, covering such corporations, and not for pecuniary profit."

III.

That said corporation has no capital stock; that it is comprised of members, who to become such, pay an initiation fee and dues fixed by the by-laws of said corporation.

IV.

That the present membership is not in excess of seventy (70) members; that said corporation has assets consisting of real and personal property in the City of Los Angeles, approximating in value $87,000.00. That one of said assets is a two-story building located at 746 South Figueroa Street, in the City of Los Angeles, from which the said Society receives a monthly rental of FIVE HUNDRED ($500) DOLLARS.

V.

That in December, 1941, EMMA WILHELMINA STOLTENBERG, gave the Los Angeles County Pioneer Society the sum of FIFTEEN THOUSAND ($15,000.00) DOLLARS, and within approximately a month thereafter gave an additional FIVE THOUSAND ($5000) DOLLARS. That said Society purchased the property aforementioned, for approximately THIRTY-TWO THOUSAND ($32,000.00)

DOLLARS, assuming a mortgage thereon in the sum of $15,000.00.

VI.

That under the terms of the Will of said Emma Wilhelmina Stoltenberg, a copy of which is hereto attached marked Exhibit "A" and hereby referred to and made a part hereof, the Los Angeles County Pioneer Society received the following property:

(1) Lot 3, Tract 1226, County of Los Angeles, State of California, recorded in Book 19273, Page 117, Official Records of Los Angeles;
(2) West 40 feet of Lot 632, Tract 1631, County of Los Angeles, State of California, recorded in Book 7398, page 221, Official Records of said County;
(3) Lot 18 Meadow Park Tract, County of Los Angeles, State of California, Recorded in Book 1340, Page 188 of Deeds, Records of said County;
(4) Household goods and furniture in the premises at 312 N. Normandie Place, Los Angeles, California;
(5) Balance of cash in the sum of $12,283.07, and any other property belonging to said estate not now known, or that may hereafter be discovered.

That said decree of distribution was dated October 16, 1946. That later on all of said real property was sold and Los Angeles County Pioneer Society received the sum of $24,584.04 and the following property described in the decree of distribution.
Exhibit "B".

VII.

That by a vote of the Board of Directors of said Society meetings are now conducted in the Figueroa Hotel, this being due to the small number of members of said Society; that said Society conducts its monthly meetings on the first Tuesday of each month, and there are no other meetings held. That since the incorporation of the Society the meetings have been held only monthly; that the members of said Society and the Board of Directors decided that to occupy the entire building for meeting purposes at such rare intervals and with such a small number of members would be both inconvenient and wasteful.

VIII.

That due to the fact that membership in said Society has been closed to the further admittance of members thereof, a section was added to the by-laws of said Society on the 4th day of May, 1948, and unanimously adopted limiting the membership in said Society to the then active members and to admit no further members.

IX.

That there is on hand the sum of $31,572.02; that said Society has no debts or obligations whatsoever, all taxes, Federal, State, County and City have been paid; that it has no current expenses; that said property is under a lease at a monthly rental of $500.00 per month, . . . ; that it is the desire of a majority of the members and the Board of Directors to distribute

among certain members, who are in need of assistance, such sums of money as in their judgment is deemed necessary. That the Board of Directors claim the right to distribute funds and assets of said corporation, plaintiff herein, to its needy members, and in any lawful manner distribute any of the assets of the corporation, and that upon dissolution of said corporation any or all of the assets thereof can be distributed to its members.

X.

That the defendant, MNO PIERCE, objects to the distribution of said funds to said members, as above stated, and a controversy has arisen between said plaintiff and defendant relating to the rights of plaintiff to distribute to any of the members of said Society any of the assets of said corporation, or in any manner distribute any of the assets of said corporation, or that upon dissolution of said corporation that any or all of the assets thereof could be distributed to the members thereof.

XI.

That said defendant objects to said distribution on the ground that all of the assets of said corporation are held in trust under and by virtue of the will of Emma Wilhelmina Stoltenberg, and under and by virtue of the Decree of Distribution entered in her probate estate, by said corporation for the sole purpose of maintaining a home or meeting place of said corpora-

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tion, and that no other disposition of said assets can be made by it.

## XII.

That the Board of Directors desire to distribute some of the assets of said Society to the members thereof, but in view of said controversy, desire the judgment of this court as to the power of said Board of Directors and upon the question as to whether the assets thereof are held in trust for the specific purpose of maintaining a home or meeting place for said corporation or in trust for any other purpose.

WHEREFORE, plaintiff prays judgment:

1. That plaintiff has the power to distribute any part or all of its assets in any lawful manner that it decides to dispose of them;

2. For the declaration of rights and duties of the Society hereto under and by virtue of certain gifts, or under and by virtue of the terms of the Will of said Emma Wilhelmina Stoltenberg and Decree of Distribution entered in her probate estate, also, a determination of any and all questions of construction of gifts of said Emma Wilhelmina Stoltenberg, and as to whether the gifts hereinbefore mentioned were a gift creating a trust.

3. That the Court declare, adjudge and decree that the plaintiff, by and through its Board of Directors, has the power and authority to distribute any part or all of its assets in any manner that it decides to dispose

of them within the scope of its Articles of Incorporation.

4. That the Court declare, adjudge and decree that gifts during the lifetime, and bequest through the Will of Emma Wilhelmina Stoltenberg to the plaintiff herein, were outright gifts to the plaintiff, with full right of ownership therein, and with full right of disposal of same, and that said gifts and bequests do not constitute a trust estate of any kind whatever.

WM. J. HANLON,

Attorney for Plaintiff.

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## APPENDIX F

Filed 1949 May 26 AM 11:36
HAROLD J. OSTLY
Los Angeles County Clerk
By C. C. PERRINE, Deputy

WILLIAM J. HANLON
Attorney for Plaintiff
LOUIS J. EULER
Attorney at Law
403 Walter P. Story Building
Broadway at Sixth St.
Los Angeles 14, California
VAndike 3737
Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

| | |
|---|---|
| LOS ANGELES COUNTY PIONEER SOCIETY, a corporation, Plaintiff, vs. MNO PIERCE, Defendant. | No. 559-035 FINDINGS OF FACT AND CONCLUSIONS OF LAW |

The above entitled action came on regularly for trial in the above entitled court, on the 19th day of May, 1949, before the Honorable Clarence L. Kincaid,

judge presiding, in department 1 thereof, being the presiding judge of said court, said case was then by the presiding judge transferred to Department 57 of the above entitled court at the Broadway Temple Building, for trial on May 20, at the hour of 9:30 o'clock A.M., before the Honorable Myron Westover, judge pro tem presiding. A stipulation signed by counsel for both plaintiff and defendant stipulating that the Honorable Myron Westover act as judge pro tem had heretofore been filed and made a part of the records of this case. Upon the case being called for trial, William J. Hanlon, Esq., attorney for plaintiff announced that all of the evidence in the case would be submitted upon stipulation which stipulation was in writing, dated May 16, 1949, and signed by William J. Hanlon, Esq., attorney for plaintiff, and Louis J. Euler, Esq., attorney for defendant. Said stipulation was accepted as part of the records of the case and filed and by reference made a part hereof including a copy of the articles of incorporation of the Los Angeles County Pioneer Society.

Thereupon, William J. Hanlon, Esq., attorney for the plaintiff, argued the law as applied to the evidence, followed by argument by Louis J. Euler, Esq., attorney for defendant, MNO PIERCE. At the conclusion of the arguments the matter was taken under submission by the Honorable Myron Westover, judge presiding in said department.

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## FINDINGS OF FACT

### I

That the plaintiff, LOS ANGELES PIONEER SOCIETY, is a corporation, organized and existing under and by virtue of the laws of the State of California; that its principal place of business is the City of Los Angeles, County of Los Angeles, State of California; that the plaintiff has no capital stock.

### II

That the defendant, MNO PIERCE, is a member of Los Angeles County Pioneer Society, the corporation plaintiff herein, and at all times mentioned he was a member in good standing of the plaintiff and that at the time the controversy herein arose he was the president of the Los Angeles County Pioneer Society, plaintiff.

### III

That the articles of incorporation of said Los Angeles County Pioneer Society state the purposes for which it is formed as follows:

> "That the purpose for which this corporation is formed is to cultivate social intercourse and friendship among its members, to collect and preserve data touching the early history of Los Angeles County and State of California, to collect and preserve articles, specimens and material things illustrative or demonstrative of the customs, modes and habits of the aforesaid times in said state; to

perpetuate the memory of those who, by their labors and heroism, contributed to make the history of said county and state; and in furtherance of said purpose to receive, purchase, sell, hold, convey, lease, rent and maintain all kinds of property, both real and personal, to build club houses, and to do any and all acts necessary and convenient for the promotion of said purposes; and to exist as a social corporation under the provisions of the laws of the state of California, covering such corporations, and not for pecuniary profit."

IIIa

That this corporation has no capital stock, that it is comprised of members who to become such pay initiation fee and dues fixed by the by-laws of said corporation.

IV

That the present membership comprises approximately seventy (70) members; that said corporation has assets consisting of real and personal property in the city of Los Angeles, of the approximate value of $100,000; that one of the said assets is a two-story building located at 746 South Figueroa Street, in the City of Los Angeles, from which the said Society, plaintiff herein, receives a monthly rental of $500.

V

That in December 1941, Emma Wilhelmina Stoltenberg gave the Los Angeles County Pioneer Society the

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sum of Fifteen Thousand ($15,000) Dollars, and within approximately a month thereafter gave an additional Five Thousand Dollars ($5,000); that said Society purchased the property aforementioned for approximately Thirty-two Thousand Dollars ($32,000), assuming a mortgage thereon in the sum of Fifteen Thousand Dollars ($15,000).

VI

That under the terms of the will of Emma Wilhelmina Stoltenberg, the LOS ANGELES COUNTY PIONEER SOCIETY was made a legatee and devisee of certain real and personal property; that under the decree of distribution of said estate, dated October 16, 1946, said real and personal property was distributed to said LOS ANGELES COUNTY PIONEER SOCIETY, plaintiff herein.

VII

That due to the fact that membership in said estate has been closed to the further admittance of members thereof, a section was added to the by-laws of said Society on the 4th day of May, 1948, and unanimously adopted, limiting the membership of said Society to the then active members and to admit no further members.

VIII

That LOS ANGELES COUNTY PIONEER SOCIETY, plaintiff, has cash in the treasury of said

corporation; that the Society has no debts or obligations whatsoever; all taxes, federal, state, county and city have been paid; that certain real property of the plaintiff herein is under a lease at a monthly rental of $500 per month; that it is the desire of a majority of the members and the board of directors to distribute among certain members who are in need of assistance such sums of money as in their judgment are deemed necessary; that the board of directors claim the right to distribute funds and assets of said corporation, the plaintiff herein, to its needy members and in any lawful manner distribute any of the assets of the corporation, and that upon dissolution of said corporation any or all of the assets thereof can be distributed to its members.

IX

That the defendant, MNO PIERCE, admits that it is the desire of a majority of the members of the board of directors to distribute among certain members who are in need of assistance such sums of money as in their judgment are deemed necessary. The board of directors claims the right to distribute funds and assets of the corporation to its needy members, and to distribute upon dissolution.

X

The defendant, MNO PIERCE, admits that he objects to the distribution of funds of the corporation plaintiff to its needy members and a partial dis-

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tribution to the members generally and admits that controversy has arisen between the plaintiff and the defendant relating to the rights of plaintiff to distribute to any of the members of such Society any of the assets of said corporation or in any manner distribute any of the assets of said corporation.

XI

That the defendant, MNO PIERCE, admits that the ground of his objection to said distribution of the assets of said corporation is that in the opinion of the defendant they are held in trust under and by virtue of gifts made by Emma Wilhelmina Stoltenberg during her lifetime to the plaintiff herein, and devices and legacies made to the plaintiff herein under and by virtue of her will and the decree of distribution entered in her probate estate.

Defendant, MNO PIERCE, further bases his objection to such disposition of funds and distribution upon the opinion that he formulated after writing a letter to the Secretary of State of the State of California concerning the controversy set forth in plaintiff's complaint, a copy of which letter is attached to defendant's answer and by reference made a part hereof and also upon the response he obtained from the Secretary of State contained in a letter, a certified copy of which is attached to the defendant's answer, marked "Exhibit B" and by reference made a part hereof.

Defendant further bases his objections upon an oral opinion he obtained from the Attorney General of the

State of California after giving his oral views to the Attorney General concerning the controversy involved in the case before the court.

XII

That the board of directors of the plaintiff desires to distribute some of the assets of the said Society to the members thereof, but in view of said controversy desires the judgment of the above entitled court as to the power of said board of directors and upon the question as to whether the assets thereof are held in trust for the specific purpose of maintaining a home or meeting place for said corporation or in trust for any other purpose.

CONCLUSIONS OF LAW

I

That neither the LOS ANGELES COUNTY PIONEER SOCIETY, the corporation plaintiff, nor its board of directors may distribute or pay its funds to needy members of the plaintiff Society; and that neither the LOS ANGELES COUNTY PIONEER SOCIETY, the corporation plaintiff, nor its board of directors may make a partial distribution of its assets to its members.

II

That no trust of any kind or character was created nor impressed upon nor exists in connection with gifts during the lifetime of said Emma Wilhelmina Stolten-

berg to the LOS ANGELES COUNTY PIONEER SOCIETY, plaintiff herein, by said Emma Wilhelmina Stoltenberg.

That no trust of any kind or character was created nor impressed upon nor exists upon the real property or other personal property under and by virtue of the terms of the will of Emma Wilhelmina Stoltenberg by devices and legacies made to the plaintiff herein nor under and by virtue of the decree of distribution entered in her probate estate.

That the court concludes that all of said gifts were outright and created no trust.

III

That the LOS ANGELES COUNTY PIONEER SOCIETY, corporation plaintiff herein, by and through its board of directors, pursuant to Sections 9800 and 9801 of the Corporations Code of the State of California, upon making application to the Superior Court of the State of California, in and for the County of Los Angeles, and upon obtaining a judgment of dissolution, after paying debts and obligations, if any, may then wind up the affairs of the plaintiff and the board of directors of the LOS ANGELES COUNTY PIONEER SOCIETY, the corporation plaintiff herein is authorized to distribute, after the deduction of all reasonable expense in connection with said proceeding, the assets, ratably among its active members in good standing of said corporation plaintiff then living,

without prejudice to the rights of members to organize a new corporation or an unincorporated association if desired.

Dated this 25th day of May, 1949.

MYRON WESTOVER
Judge

## APPENDIX G

Filed May 26 1949
HAROLD J. OSTLY
County Clerk
T. A. COLLINS
Deputy.

Entered Jun 1 1949
Book 2045 Page 243
By C. Parker, Deputy
WILLIAM J. HANLON
Attorney for Plaintiff
LOUIS J. EULER
Attorney at Law
403 Walter P. Story Building
Broadway at Sixth St.
Los Angeles 14, California
VAndike 3737
Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

| | | |
|---|---|---|
| LOS ANGELES COUNTY PIONEER SOCIETY, a corporation Plaintiff | ) | No. 559-035 |
| vs. | ) | JUDGMENT |
| MNO PIERCE, Defendant. | ) | |

The above entitled action came on regularly for trial on May 19, 1949, in Department 1 of the above entitled court, before the Honorable Clarence L. Kincaid, judge presiding, Presiding Judge of the Superior Court, who then assigned said action for trial on May 20, 1949, at the hour of 9:30 A.M. to Department 57 of the Superior Court, before the Honorable Myron Westover judge pro tem presiding, stipulation for the appointment of said Honorable Myron Westover to act as judge pro tem in this matter having previously signed by William J. Hanlon, Esq. attorney for plaintiff and Louis J. Euler, Esq., attorney for defendant, and then filed in the records of this action; that on said May 20, 1949, at the hour of 9:30 A.M. in Department 57 of said court, the above entitled cause was called for trial by the Honorable Myron Westover, judge pro tem presiding. Upon said cause being called for trial, William J. Hanlon, Esq., thereupon presented to the court a stipulation that all the evidence in the case should be introduced through the stipulation without the necessity of taking testimony of witnesses personally; that said stipulation was signed by William J. Hanlon, Esq., attorney for plaintiff, and Louis J. Euler, Esq., attorney for the defendant, accepted for filing and made part of the record of the above entitled case.

Thereupon William J. Hanlon, Esq., argued the law for and on behalf of the plaintiff in the case, and Louis J. Euler, Esq., argued the law for and on behalf of the defendant in the case.

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The court thereupon took the matter under submission and having duly considered the same and having filed herein Findings of Fact and Conclusions of Law and having directed judgment be in accordance therewith,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that neither the LOS ANGELES COUNTY PIONEER SOCIETY, the corporation plaintiff, nor its board of directors may distribute or pay its funds to needy members of the plaintiff Society; and that neither the LOS ANGELES COUNTY PIONEER SOCIETY, the corporation plaintiff, nor its board of directors may make a partial distribution of its assets to its members.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that no trust of any kind or character was created nor impressed upon nor exists in connection with gifts during the lifetime of said Emma Wilhelmina Stoltenberg to the LOS ANGELES COUNTY PIONEER SOCIETY, plaintiff herein, by said Emma Wilhelmina Stoltenberg.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that no trust of any kind or character was created nor impressed upon nor exists upon the real property or other personal property under and by virtue of the terms of the will of Emma Wilhelmina Stoltenberg by devices and legacies made to the plaintiff herein nor under and by virtue of the

decree of distribution entered in her probate estate, and it is further ordered, adjudged and decreed that all of said gifts were outright and created no trust.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the LOS ANGELES COUNTY PIONEER SOCIETY, corporation plaintiff herein, by and through its board of directors, pursuant to Sections 9800 and 9801 of the Corporations Code of the State of California, upon making application to the Superior Court of the State of California, in and for the County of Los Angeles, and upon obtaining a judgment of dissolution, after paying debts and obligations, if any, may then wind up the affairs of the plaintiff, and the board of directors of the LOS ANGELES COUNTY PIONEER SOCIETY, the corporation plaintiff herein is authorized to distribute, after the deduction of all reasonable expense in connection with said proceeding, the assets, ratably among its active members in good standing of said corporation plaintiff then living, without prejudice to the rights of members to organize a new corporation or an unincorporated association if desired.

Dated this 25th day of May, 1949.

MYRON WESTOVER
Judge

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## APPENDIX H

At the regular stated meeting of the Los Angeles County Pioneer Society, held at 1810 Menlo Avenue, City of Los Angeles, a majority of the members of the Los Angeles County Pioneer Society elected to revoke their previous resolution and action to wind up and dissolve the Los Angeles County Pioneer Society and to continue the affairs of the Los Angeles County Pioneer Society and all its activities, including any activities that may be held to be charitable by the final court determination.

The Los Angeles County Pioneer Society sets forth:

(a) That the society or corporation has revoked its election to wind up and dissolve;

(b) That no assets have been distributed pursuant to the election;

(c) That there are presently 48 members of the society. All those voting or giving written consent to the revocation are as follows:

Philip McAnany; Nellie Marie Mason; Mrs. Harriett P. Bryson; Milta R. Hagan; Moritz J. Rosenthal; Sophia A. Hunn; Maude E. Korber; Josephine L. Garcia; Christina Zeller; Marie J. Wood; Nina B. Colton; Edith O'Shea; Mercedes M. Borquez; Louis Goss; Charles Mason; Roy H. Ford; Mary Bell Eberle; Jack M. Edwards; Adelaide Perez; Jas. E. McGrath; Cary W. Parsons; Frank J. Pearne; Dexter Monroe;

Ella J. Summers; John S. Murset; Nellie S. Burke; Marie H. C. Driskel; Mrs. Nellie Lewis; Anna Petzold and Hugh C. Kelly.

There are 48 members who are alive and entitled to vote thereon.

(d) The election and revocation is also by resolution of the Board of Directors.

(e) This action is taken pursuant to the desire expressed by all members from the outset to carry out all the purposes of the society at all times, and that the society so expressed itself immediately following the hearings in Judge Pope's court, and further expressed itself informally to the Attorney General and expressed a desire to carry out for itself any purposes which the authority of the court and the state held that it should carry out. That at no time has it ever abandoned any of such purposes but has at all times sought court opinions as to its rights to its funds and its property.

(f) The society has regularly met monthly, with the exception of two meetings since the original petition to wind up and dissolve was filed, but has had no funds to carry on the purposes of the society because of court proceedings.

The society therefore requests that the funds impounded be returned to it for the purpose of carrying on the purposes of the society.

It is further resolved that the Attorney General be requested to cooperate with the Los Angeles County

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Pioneer Society to the end that the society may have the funds returned to it and that it may have the benefit of his views with reference to the same.

DATED: January 19, 1953.

PHILIP McANANY
Secretary

(Seal)

STATE OF CALIFORNIA, )
County of Los Angeles ) ss.

ON THIS 21st day of January, A.D., 1953, before me, Verona Taft, a Notary Public in and for said County and State, personally appeared Philip McAnany, known to me to be the Secretary of the Los Angeles County Pioneer Society, the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument, on behalf of the Corporation herein named, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

VERONA TAFT
*Notary Public in and for said County and State.*

My Commission Expires Apr. 5, 1956.

(Seal)

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IN THE

# Supreme Court of the United States

October Term, 1953
No. 371.

LOS ANGELES COUNTY PIONEER SOCIETY,
*Petitioner,*

*vs.*

HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA and PEOPLE OF THE STATE OF CALIFORNIA,
*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

## BRIEF FOR RESPONDENT, PEOPLE OF THE STATE OF CALIFORNIA, IN OPPOSITION.

### Opinions Below.

The Opinion of the California Supreme Court is reported at 40 Cal. 2d 852, 246 P. 2d 1029. The Supreme Court Opinion was filed on hearing granted after decision by the District Court of Appeal, Second Appellate District, Division Two, affirming an Order of the Superior Court. The Opinion of the District Court of Appeal is reported at 246 P. 2d 1029.

### Jurisdiction.

The Petition seeks to invoke the jurisdiction conferred by 28 U. S. C., Section 1257(3).

## Questions Presented.

Although the Petition purports to present questions falling within the purview of 28 U. S. C. 1257(3), a reading of the record (a copy of which was not served on this respondent) and the Opinion of the California Supreme Court will disclose that those questions are predicated upon a disregard of the facts found by the trial court.

## Statement.

The decision of the California Supreme Court affirmed an Order of the California Superior Court appointing the Historical Society of Southern California successor trustee of a charitable trust previously maladministered by petitioner. The existence of a charitable trust had previously been determined by the trial court by the entry of an interlocutory judgment to that effect upon a Petition in Intervention filed by the Attorney General of the State of California in voluntary dissolution proceedings theretofore commenced by petitioner.

It should be immediately apparent from a reading of the Opinion filed by the California Supreme Court, and the record herein, that the filing of the Petition herein is but the last step in a series of legal maneuvers designed to accomplish the distribution of assets of a public, charitable trust to private individuals for their private, individual benefit in distinct violation of that trust. It is also to be noted that even at this stage of petitioner's activities the Attorney General of the State of California, a necessary party to any proceeding purporting to affect the disposition of assets of a charitable trust, has not been named as a party respondent in petitioner's caption of this case.

## ARGUMENT.

### I.

### The Questions Presented by the Petition Are Not Predicated Upon the Facts Found by the Trial Court.

The thirteen questions presented by the Petition are all predicated upon a disregard of the trial court's finding that the money involved was the corpus of a public, charitable trust of which petitioner was merely the trustee, and that petitioner had abandoned the trust.

### II.

### The Decision Below Is Clearly Correct.

The decision of the California Supreme Court reaches the only conclusion possible under the circumstances. In view of the extensiveness and completeness of that court's decision, counsel will not presume to paraphrase it.

Justice Carter's dissenting Opinion, upon which petitioner places much stress, disregards the trial court's findings and proceeds upon the premise that petitioner was not seeking to dispose of the assets of a charitable trust.

### III.

### The Provisions of Article I, Section 10 of the Constitution of the United States and the Fourteenth Amendment Thereto Are Not Pertinent to the Instant Litigation.

Inasmuch as the record clearly establishes that the assets involved are subject to a public, charitable trust and that petitioner abandoned its duties as trustee, it necessarily follows that there has been no impairment of a contractual obligation in violation of Article I, Section

10 of the Constitution of the United States, nor a violation of the due process and equal protection provisions of the Fourteenth Amendment.

**Conclusion.**

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

EDMUND G. BROWN,
*Attorney General of the State of California,*

FRANK J. MACKIN,
*Assistant Attorney General,*

EDWARD SUMNER,
*Deputy Attorney General,*

*Counsel for Respondent, People of the State of California.*

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IN THE

# Supreme Court of the United States

October Term, 1953.
No. 371

In re LOS ANGELES COUNTY PIONEER SOCIETY, a Corporation, in Process of Voluntary Dissolution.

LOS ANGELES COUNTY PIONEER SOCIETY, *et al.*,
*Appellants,*

*vs.*

HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA (a corporation), *et al.*,
*Respondents,*

THE PEOPLE, *et al.*,
*Interveners and Respondents.*

## Reply of Respondent Historical Society of Southern California to Petition for Writ of Certiorari.

Petitioner, Los Angeles County Pioneer Society, an incorporated Society, initiated proceeding for voluntary dissolution and the distribution of its property among its members. The People of the State of California, by their Attorney General, with petitioner's consent, intervened by complaint alleging that petitioner is organized and exists for charitable and benevolent purposes—collection and

preservation of historical data relating to Los Angeles County and California,—that its property is dedicated to such purposes, that petitioner had abandoned the charitable trust and was proceeding to divert the trust property to the private use of its members, and that a new trustee is necessary, and praying for protection of the trust and for general relief.

The judgment, rendered on concurrent findings, sustained the allegations of the complaint, appointed Historical Society of Southern California successor trustee, and directed that the trust property (theretofore impounded) be turned over to it; it also ordered Pioneer to account for its trusteeship and to then proceed with the projected resolution.

The judgment was affirmed by the District Court of Appeal and by the Supreme Court of California, and rehearing was denied.[1]

Petitioner seeks certiorari to review the judgment.

## The Rules of This Court Have Not Been Complied With.

Although the title in the official report includes *"The People, et al., Interveners and Respondents,"* and the judgment is predicated upon their complaint in intervention, they are omitted from the title to the petition.

---

[1]The case is officially reported in 40 Cal. 2d 852.

Two of the seven justices dissented. On denial of petition for rehearing, one of the dissenters, in a separate opinion, used language which petitioner characterizes as a "stirring indictment." The "indictment" is one of a series of like manifestations emanating from the same source, critically reviewed in an article by Dean Pound in Volume 39, Number 9 (September, 1953) of the American Bar Association Journal, p. 794, entitled, *"Cacoethes Dissentiendi:* The Heated Judicial Dissent."

The petition contains numerous references such as:

"(Minute Book in Evidence)" p. 5;

"(Exhibit K)" p. 7;

"(R. Tr. 295)" p. 8;

"(Clks. Tr. 15)" p. 15, etc.

and is replete with other factual statements, without indication of the source.

No notice has been served of the filing with the Clerk of this Court of any certified or other copy of the record in the court below, or of any Clerk's or Reporter's transcript in the trial court, nor (if it has been so filed) has any copy of any record or transcript been served on this respondent.

Respondent Historical Society, believing that the Supreme Court's opinion correctly states the law, and that the petition shows lack of merit on its face, respectfully submits this reply thereto:

## STATEMENT.

### Petitioner Is a Charitable Corporation.

As long ago as 1921, petitioner was finally adjudged to be incorporated for public charitable purposes—*i. e.*, the collection and preservation of historical data relating to Los Angeles County and California.[2]

---

[2]*Estate of Dol; Los Angeles County Pioneer Society v. Flint, et al., executors* (1921), 186 Cal. 64. In this case Pioneer was held to be a public charitable corporation, and that, therefore, a bequest to it by a will executed within thirty days of the death of the testator was void under Section 1313 of the Civil Code of California. The latter section forbids devises or bequests in trust for charitable uses, "except the same be done by will duly executed at least thirty days before the decease of the testator."

It is settled in California[3] and in other jurisdictions, including this Court,[4] that the decision in the case just cited precludes petitioner from relitigating the issue as to its charitable status. Respondents so contended herein; the Supreme Court, however, found it unnecessary to decide the question, because, from an elaborate and careful review of the extensive trial record, it concluded that "substantial evidence supports the determination of the trial court that Pioneer holds its assets for the charitable purposes expressed in its articles of incorporation," and that "Pioneer's course of conduct throughout these proceedings thus demonstrates that it has abused and abandoned its trust and amply supports the determination * * * that a new trustee should be appointed" (40 Cal. 2d 862); the *Dol* case was, therefore, given "the effect of *stare decisis* only" (40 Cal. 2d 860).

**Petitioner's Property Is Dedicated to Its Public Charitable Purposes.**

Petitioner acquired, by general gifts, bequests and devises, property, including real estate in the business section of the rapidly growing City of Los Angeles (Pet., p. 8; 40 Cal. 2d 860).

**Petitioner's Colorable Procedures.**

Its membership of 600 dwindled until, in 1948, it was reduced to 58 (Pet., p. 11).

As stated by the Supreme Court (40 Cal. 2d 861-862), commencing in 1948, Pioneer

> "amended its by-laws to close its membership and provide that existing members had a proprietary interest in its assets";

---

[3]*Bernhard v. Bank of America* (1942), 19 Cal. 2d 807, 811, 813,
[4]*Stoll v. Gottlieb* (1938), 305 U. S. 165, 172-173.

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"brought a declaratory relief action to obtain a ruling that the assets were not held in trust, paying the attorney fees for both parties thereto";[5]

"reduced its property to cash";

"commenced dissolution proceedings";[6] and

"maintained in the trial court, in a petition for writs of prohibition and mandate, and on this appeal that its assets are not held for charitable purposes."

**Intervention by the Attorney General.**

The petition states (p. 14) that persons representing important interests and newspapers joined in persuading the Attorney General to intervene. At any rate, that official decided that his duty required him to, and he did intervene, seeking, on behalf of the State, judicial protection of the public trust and appointment of a successor trustee. (Pioneer's petition for certiorari overlooks the fact, stressed by the State Supreme Court, that Pioneer stipulated to the intervention (40 Cal. 2d 863).)

Pioneer's answer alleged that it had continued to carry out the charitable purposes, but denied the trust and persisted in its intention to dissolve and distribute the property to and for the private use of its members (40 Cal. 2d 859).

---

[5]The only defendant in the action was one Pierce, a participating member. Notwithstanding the settled law of the State that the Attorney General is an indispensable party to such an action (*People v. Cogswell* (1896), 113 Cal. 129, 136), neither the State nor the Attorney General was made a party thereto; the facts were stipulated (40 Cal. 2d 857).

[6]Following the declaratory judgment "opposing" counsel in the declaratory relief action jointly instituted for Pioneer proceeding for its dissolution and represented it in all subsequent proceedings in the trial court. Pioneer has throughout persisted in its announced purpose to divert the assets to the private use of its members.

Findings and judgment were entered, Historical Society of Southern California was appointed and qualified as successor trustee, and Pioneer appealed, with the result heretofore stated.

## ARGUMENT.

As heretofore shown, the State Supreme Court reviewed the facts and upheld the findings and judgment.

Pioneer's corporate powers and obligations, and the relations between the corporation and its members, are governed by the law of California.

That it is and has continued to be organized and to exist for public charitable and benevolent purposes, that its property consists of general gifts, bequests and devises dedicated to those purposes, that Pioneer had repudiated and abandoned the trust and was endeavoring to misappropriate the trust property are all issues of fact, determinable from the evidence. The issues have been so determined by the Attorney General, by the trial court, by the District Court of Appeal, and by the State Supreme Court.

It has been settled by numerous decisions that Writ of Certiorari is not available "to review the evidence or inferences drawn from it."

*United States v. Johnston* (1925), 268 U. S. 220, 227;

*General Pictures Co. v. Electric Co.* (1938), 304 U. S. 175, 178;

*Alabama Power Co. v. Ickes* (1938), 302 U. S. 464, 477.

Pioneer, ever since as early as 1948, has denied and repudiated the public trust and has persisted in the attempt to misappropriate the property dedicated to its charitable and benevolent purposes.

As said in *Irvine v. Dunham* (1884), 111 U. S. 327, 334: "No trustee can be more unsuitable that one who * * * denies the trust."

It is elementary that members of a charitable and benevolent corporation have no private proprietary interest in property dedicated to the corporation's charitable purposes. Also, that such members are not entitled to have charitable assets distributed to their private uses, either upon dissolution of the corporation or at any other time (40 Cal. 2d 863).

The Motion to Remand, made on the eve of the final argument in the Supreme Court, contains no suggestion that Pioneer's evil purposes have been abandoned—quite the contrary. It is equivocal, and does not recant its denial and repudiation of the trust.

## Conclusion.

It is respectfully submitted that the judgment infringes no right, title or interest of petitioner or of any of its members; that it impairs no contract, and deprives no one of property without due process; that, therefore, no ground for Writ of Certiorari is presented and the petition should be denied.

LAWLER, FELIX & HALL,

OSCAR LAWLER,

*Attorneys for Historical Society of Southern California.*

No. 371

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HAROLD B. WILLEY

IN THE

# SUPREME COURT

OF THE

# United States

**October Term, 1953**

In the Matter of the LOS ANGELES COUNTY PIONEER SOCIETY, a Corporation in the Process of Voluntarily Winding Up,
*Petitioner and Appellant,*
vs.
THE HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA,
*Respondent and Appellee.*

THE PEOPLE OF THE STATE OF CALIFORNIA, EDMUND G. BROWN, Attorney General, State of California,
*Interveners.*

## ANSWER TO REPLY OF THE HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA TO THE PETITION FOR WRIT OF CERTIORARI.

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*Attorney for Petitioner.*

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## ANSWER TO REPLY OF THE HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA TO THE PETITION FOR WRIT OF CERTIORARI.

*To the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:*

The Respondents have failed to meet our assignments and our argument in our petition. In the absence

of any legal or other cogent ground why the petition should not be granted, counsel for the Respondents have used epithets and have resorted to criticism of the dissenting justices of the Supreme Court of California for dissenting in a case in which the money of the Pioneer Society has been taken, lock, stock and barrel, and turned over to the Historical Society.

The Respondent says the rules of this court have not been complied with, but he does not point out wherein the rules have not been complied with. His first complaint is that the title does not include "the People, et al., Intervenors and Respondents," to which we take it that he refers to the Attorney General's intervention.

The appeal is from the Order and Judgment turning the money over to the Historical Society, not the Attorney General. The Attorney General which belatedly intervened in the trial court was duly and regularly served in these proceedings with all papers. A copy of the receipt of service by him of this Petition for Certiorari has been mailed to this Court. It has previously appeared in all Appellate proceedings. The Attorney General's office has not, so far as we find, made any reply, although duly served with a copy of our petition. An affidavit by the printers show that a copy of our petition was forwarded to the Attorney General's office as soon as it was printed.

Respondent says the petition contains numerous references such as "minute book in evidence, page 5;

Exhibit K, page 7; Reporter's Transcript, 295, page 8; Clerk's Transcript, page 15, etc., and is replete with other factual statements without indication of the source." We are surprised at these representations being made to this Court. The minute book in evidence was introduced at the trial of the case in the Superior Court. It was also transferred to the Supreme Court of California, pursuant to Rule 10b Rules of the California Supreme Court and the usual procedure in California courts, and was always before the Court and counsel in California, all of which is known as such to Respondent.

The same thing happened with reference to Exhibit K in the State court proceeding. Counsel for Respondent said he could not find "Exhibit K". We had the Clerk make him a photostatic copy and sent it to him. Counsel for the Respondent also received a Reporter's Transcript, and a Clerk's Transcript, the same as counsel for the appellant, and he is well aware that the source is the official court reporter who had transcribed or transmitted all of the documents to the Appellate Court. We did not serve another copy of the Reporter's Transcript on counsel as he has one copy the same as appellant, and we served notice on him of the filing with this Court of the copy of the record in the court below, and we asked him to acknowledge it. This he declined to do, but he has at all times been in the possession of and served with each and all of the papers set forth in our certified record prepared by the Clerk of the Supreme Court except

original exhibits which under California procedure were transferred to the Supreme Court of California and thence to this Court under that Court's certificate. The rules of the Supreme Court of California require such service on opposing counsel in order to file the documents, or the transmittal of original exhibits to the Appellate Court where they are accessible to all counsel.

Therefore, the statements made in the brief in opposition are apparently made to embarrass the Pioneer Society on this appeal and to thwart its efforts to get back the money which was taken from it.

On page 2 of the Respondent's brief, it seeks to criticize two justices of the Supreme Court of California who have been forthright in the support of fundamental rights of litigants. Their dissents have caused this Court to take over such cases as *Rochin vs. California; Phyle vs. Duffy; Adamson vs. People of the State of California,* and other cases in which their voices speak loudly for justice, which this Court heard, and acted upon. We would rather take their word in regard to a case in which they had examined the entire record and studied the law than the opinion of a dottering old man who knows nothing of the facts or the law of the cases he criticizes when the two justices say in this case that justice has miscarried and that it is the worst case of "legalized larceny" that has come to the attention of the writer, we submit that their views are worthy of the attention and favorable action of this Court. If the criticism leveled at the

California justices for dissenting, had any merit at all, that criticism would apply equally to the learned justices of this Court, and to such outstanding justices as Oliver Wendell Holmes, Charles Evans Hughes and Harlan Stone. The use of this sort of attack in Respondent's brief shows its lack of substance on the main issues before this Court.

No argument has been devoted by Respondent to the impairment of the contract of Pioneer Society. The contract which was made between the State of California and Pioneer Society, and Mrs. Staltenberg and Pioneer Society, was that the gift was to the Pioneer Society members. The order of the trial court taking away Pioneer's money from it, gave it to Historical Society for all of the purposes for which Pioneer Society was created. One of those purposes was to have *social intercourse* among the Pioneer Society members. The gift to the Pioneer Society by Mrs. Staltenberg was not a gift for the Historical Society members, yet the trial court orders the money turned over to the Historical Society for social intercourse—a non-charitable purpose (as well as other purposes) among the *Historical Society members,* a gift never contemplated or dreamed of by the donor. Yet, the resolutions of the Historical Society, and the order of the Superior Court turning the money over to it, turned it over to the Historical Society for use among the Historical Society members for all purposes expressed in Pioneer's Charter, which included purposes not charitable and never contemplated by the contract

between Mrs. Staltenberg and the Pioneer Society, and by the State of California and the Pioneer Society. Such proceedings impaired the obligation of the contract between the State and the Pioneer Society, and between the Pioneer Society and Mrs. Staltenberg. The taking was also without due process of law.

Historical Society has not seen fit to answer these arguments nor could it answer these arguments. Hence, it has devoted itself to epithets and invective. It speaks of "evil purposes" and "repudiation of a trust", and "petitioner's colorable procedures".

Pioneer Society went into court and sought the determination of its rights in declaratory relief. Is it a colorable procedure to ask the judge of the court having jurisdiction as to what the rights of a society are? The statement that its actions in declaratory relief was brought against a Mr. Pierce, a participating member, is misleading. The record shows that Mr. Pierce was president of the Society and that a controversy arose as to the rights and duties of the Society to dispense with any of its moneys for charitable purposes or for the benefit of its members. A suit in declaratory relief was then filed against Mr. Pierce, and the matter came on before a Judge Westover, a veteran judge of the Superior, who had retired and who was called back to try the case. Mr. Pierce wrote the Secretary of State that he was opposed to the distribution of any of the assets of Pioneer Society, and a deputy Attorney General, fully advised of the situation, wrote

Mr. Pierce in answer to his letter. These are in the files before this Court.

The Respondent says that "the Attorney General is an indispensable party to such an action". However, there is nothing in California's codes that makes him an indispensable party, and it is presumed that Judge Westover performed his duty properly. Section 389 of the Code of Civil Procedure provides that "When a complete determination of the controversy cannot be had without the presence of other parties, the Court must then order them to be brought in, and to that end may order amended and supplemental pleadings." (Section 389, Code of Civil Procedure of California.) That trial judge found that the Pioneer Society was not a charitable society (as the evidence shows that it was not) and that judgment has never been set aside.

A motion was made by Marshall Simpson, one of the attorneys of Historical Society, to set aside and vacate that judgment of Judge Westover. The motion made the same charges as Respondent does here, but still another judge, Judge Arnold Praeger, after a full hearing of the motion, denied it. No appeal was ever taken from that denial and that judgment and order are final. (*Bernhard v. Bank of America*, 19 Cal. (2d) 807, 811). The statement that Pioneer has persisted in its announced purpose to divert the assets to the private use of its members is a misstatement of the facts shown by the record.

The affidavit of Mr. Pearne, president of the Pioneer Society, shows that, after the second judge, Judge Pope, held that the assets of Pioneer Society were charitable funds, he instructed the attorneys of Pioneer Society to seek abandonment of dissolution proceedings. It shows further that he conferred with the Attorney General and asked the Attorney General handling the case to restore the funds and that he was told it was "too late". Pioneer Society has filed with the Secretary of State of California its resolution to revoke its proceedings to dissolve—this in accordance with Section 4609 of the Corporations Code of the State of California. Yet, the Court has refused to return its money to it, and seeks to give it to Historical Society which, by its resolution, is at large to use it for its own social purposes and its own members.

The decision in this case has a widespread effect upon every social corporation in America. What happened to Pioneer Society could happen to the Masonic Lodge, Elks, or Eagles, or to any corporation meeting socially. This court should grant a hearing and restore its funds to it, taken from it by impairing the obligation of contract and without due process of law guaranteed under the Fourteenth Amendment of the Constitution of the United States.

Counsel for the Respondent have ignored the cogent language of the *Trustees of Dartmouth College vs. Woodward*, 4 Wheat, 514, 4 L. Ed. 629, 17 U. S. 514, 639 (4 L. Ed. 660). The Court there said, regarding

gifts to a private corporation with a charitable purpose:

> "It requires no very critical examination of the human mind to enable us to determine that one great inducement to these gifts is the conviction felt by the giver that the disposition he makes of them is immutable."

The Court points out there that the gift to found colleges would not be made if the corporation constituted no security for the gift and that its funds are to be governed and applied, not by the will of the donor, but by the will of the legislature. The Court found also in the learned Opinion of Chief Justice Marshall that the incorporation was a contract "the obligation of which cannot be impaired without violating the Constitution of the United States." Chief Justice Marshall said, regarding the contract, "By this contract the Crown was bound and could have made no violent alteration in its essential terms, without impairing its obligation." The Chief Justice also pointed out in his Opinion that the trustees of the college or corporation acquired a power coupled with an interest which beneficial interest is vested in such trustees. The Court said, in Chief Justice Marshall's "But the Court has deemed it unnecessary to investigate this particular point being of the opinion, on general principles, that in these private eleemosynary institutions, the body corporate has possessed the whole legal and equitable interest, and completely representing the do-

nors for the purpose of executing the trust has rights which are protected by the Constitution."

Mr. Justice Washington, in a concurring Opinion, points out that a corporation is a franchise and a contract. The corporate charter is a grant and is an express contract between the State and the corporation. He also points out that there is an implied contract.

**Justice Washington stated:**

> **"There is also an implied contract that the founder of a private charity, or his heirs or other persons appointed by him for that purpose shall have the right to visit and to govern the corporation, of which he is the acknowledged founder and patron, and also that in case of its dissolution the reversionary right of the founder to the property with which he had endowed it should be preserved inviolate."**

This language is analagous to the case at bar. While the corporation had been already formed and in existence, she founded the home by giving money toward its purchase. There was an implied contract that she had a right to direct its use and its acceptance upon that basis had to remain inviolate in accordance with the terms of the corporate charter and the statutes then in existence. Those statutes then in existence provided that upon dissolution of such corporation, if it occurred, that the funds could be distributed among its members. It is presumed that Mrs. Stoltenberg knew this at the time of her gift, but if those funds did not

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go to those members who were her friends and associates, then the reversionary rights under the law, as then existed, was to her heirs and "should be preserved inviolate." The learned Justice also said:

> "If a law increases or diminishes the number of the trustees, they are not the persons which the grantor agreed should be the managers of the fund. If it appropriate the fund intended for the support of a particular charity to that of some other charity, or to an entirely different charity, the grant is in effect set aside, and a new contract substituted in its place; thus disappointing completely the intentions of the founder by changing the objects of his bounty. And can it be seriously contended that a law which changes so materially the terms of a contract does not impair it? In short, does not every alteration of a contract, however unimportant, even though it be manifestly for the interest of the party objecting to it, impair its obligation? If the assent of all the parties to be bound by a contract be of its essence, how is it possible that a new contract, substituted for, or engrafted on another, without such assent, should not violate the old charter? . . . Mr. Justice Blackstone, lays it down, that the same identical franchise, that has been before granted to one, cannot be bestowed on another; . . . A charter is a contract, to the validity of which the consent of both parties is essential, and, therefore, it cannot be altered or added to without such consent."

In the case of the Pioneer Society, California has attempted to engraft a charitable corporation requiring twenty-five trustees on a non-profit corporation having only seven, without such assent. This impairs the obligation of the Pioneer Society's contract.

**It also attempts to take all of its funds from it, in which Pioneer has a beneficial interest and its directors are trustees to carry out the terms of the gift and the law as it existed at the time of the gift. If that law provided that upon dissolution the funds were to be distributed to those members or failing that to revert to the heirs of the donor, then that is the specific trust of the directors and a contract which the State cannot impair.**

In *The Trustees of Dartmouth College vs. Woodward,* Justice Washington further states:

> "But it is denied that it has power to repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws; and that it can, by such repeal, vest the property of such corporations in the state, or dispose of the same to such purposes as it may please, without the consent or default of the corporators. Such a law, it is declared, would be repugnant both to the spirit and the letter of the Constitution of the United States."

**The learned Justice also points out that**

> **"The laws in question divest the trustees of Dartmouth College of the property vested in them by**

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the founder, and vest it in the other trustees, for the support of a different institution, called Dartmouth University. In what respects do they differ? Would the difference have been greater in principle if the law had appropriated the funds of the college to the making of turnpike roads, or to any other purpose of a public nature? In all respects in which the contract has been altered without the assent of the corporation its obligations have been impaired; and the degree can make no difference in the construction of the above provision of the constitution."

The Pioneer Society case is similar. California has devested the directors of the Pioneer Society of the property vested in them by Mrs. Stoltenberg and has vested it in the other trustees, the Historical Society, for the support of a different institution called The Historical Society, and has provided that the Historical Society may use the funds for all of the purposes, or otherwise, for which the Pioneer Society could have used the funds.

There is no difference then if California had appropriated the money of Pioneer Society to the making of state highways or any other purpose of a public nature, including a County Hospital. In all respects in which the contract of the Pioneer Society has been altered, without its assent, its obligations have been impaired.

Counsel for the Historical Society does not seek to meet this ground of our request for *certiorari*, for it is obvious that he cannot do so.

In another concurring Opinion by Mr. Justice Story, 4 L. Ed. (Wheat) 668, the learned Justice says that if gifts of private donors for general charity became instantaneously the property of the government and compelled to yield up their rights to whomsoever the government might appoint to administer them, "it would extinguish all future eleemosynary endowments, and we should find as little of public policy as we now find of law to sustain it." He further points out that "it will hardly be contended that even in respect to such corporations, a legislative power is so transcendent that it may at its will take away the private property of the corporation, or change the uses of its private funds acquired under the public faith." He points out that the legislature does not possess the authority to seize upon those funds and appropriate them to other uses at its own arbitrary pleasure, against the will of the donors and donees. The public faith, he says, is pledged the other way and that pledge constitutes a valid contract. He further points out that "a private donation, vested in a trustee for objects of a general nature, does not thereby become a public trust, which the government may, at its pleasure, take from the trustee, and administer in its own way. The truth is, that the government has no power to revoke a grant, even of its own funds, when given to a private person, or a corporation for special uses." Such a grant conveys a legal estate.

The Court further says:

"In respect to corporate franchises, they are, properly speaking, legal estates vested in the corporation itself as soon as it is in esse. They are not mere naked powers granted to the corporation, but powers coupled with an interest. The property of the corporation vests upon the possession of its franchises; and whatever may be thought as to the corporators, it cannot be denied that the corporation itself has a legal interest in them. . . . The corporators are not mere agents, but have vested rights in their character, as corporators. . . . The franchises granted by the charter were vested in the trustees in their corporate character. The lands and other property, subsequently acquired, were held by them in the same manner. They were the private demesnes of the corporation held by it, not, as the argument supposes, for the use and benefit of the people of New Hampshire, but, as the charter itself declare, 'for the use of Dartmouth College.' There were not, and in the nature of things could not be, any other *cestui que* use entitled to claim those funds. . . . Could the legislature of New Hampshire have seized the land given by the state of Vermont to the corporation, and appropriated it to uses distinct from those intended by the charity, against the will of the trustees? This question cannot be answered in the affirmative, until it is established, that the legislature may lawfully take the property of A and give it to B; and if it could not take away or restrain the corporate funds, upon what pretense

> can it take away or restrain the corporate franchises. . . . But there are other rights and privileges belonging to the trustees collectively, and severally, which are deserving of notice. They are entrusted with the exclusive power to manage the funds, to choose the offices, and to regulate the corporate concerns, according to their own discretion. The *jus patronatus* is vested in them. . . .
>
> "May not the founder as justly contract for the possesion of this right in return for his endowment as for any other equivalent. . . . The right is not merely a collective right in all the trustees; each of them also has a franchise in it."

A reading of the *Dartmouth College* case shows that the Pioneer Society's rights have been impaired by California; that it has thought to change the corporation and to take away from the corporations rights that were vested in it; that the actions of the state impaired the obligations of its contract, and violated due process of law. None of these arguments have been answered by Respondent. Invective and criticism have been substituted. This case involves fundamental rights affecting every private social corporation, lodge and fraternity in America. If the assets of the Pioneer Society can be stripped from it, then the assets of any other association can be stripped from it.

The obligation of contract have been impaired. The money has been taken from it without due process of law. It has been denied that right to revoke its inten-

tion to dissolve and its assets restored to it. It has been deprived of vested rights.

## REPLY OF THE INTERVENERS, THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

We have just received a reply brief of the Attorney General, Intervener, in this case.

Although he makes some complaint about not receiving a copy of the record, he participated in the trial, and in the appeals in the State Court, and has been personally present in the trial and appellate courts, and has had all records available to him. Furthermore, through the actions of the respondents ALL funds of Pioneer have been impounded. The opposition to our writ is not based on this ground. If this Court grants Certiorari, we will seek a court order to secure sufficient funds for the printing of the record.

The Attorney General also says we disregard the facts found by the trial court. Two different trial judges found two different sets of facts. The first trial judge found that the Pioneer moneys were not charitable funds. This judgment has never been set aside. It became final, a motion by Historical Society attorney to set it aside was denied and never appealed from. The second judgment contradicted the first. In the light of this record, the uncontradicted evidence must be looked to. That shows that Pioneer was and is a social order of Pioneer's meeting over tea, talking over

old times. No charity is displayed. The uncontradicted facts also show that the donor, as in the *Dartmouth College* case, gave the funds to Pioneer, with a specific contract to use it for a specific purpose. Although Historical Society was then in existence, none was given to that order. The State has no power to take it from Pioneer and give it to Historical. This Court must therefore choose between the findings of the first court that Pioneer is not a charitable corporation, and the second Court's findings construing it as a charitable corporation.

The construction last placed by the California Court upon Section 9801 of the California Corporation Code, declaring it to be a charitable corporation would impair the obligation of the contract between the State and Pioneer and between Pioneer and Mrs. Stoltenberg and her heirs. It would therefore be violative of article 1, section 10 of the U. S. Constitution as construed and applied. Its construction changes the nuber of directors and composition of Pioneer; it changes and impairs the obligation of contract of the gift of Mrs. Stoltenberg.

Where impairment of the obligation of contract are involved this court will examine for itself the nature and obligation of the contract and whether it is impaired.

*Angel v. Bullington*, 330 U. S. 183, 211.

No cases are cited by respondent in answer to our petition. It therefore conceded the authorities we have cited and the propositions therein presented.

The money was taken without due process of law.

If Pioneer's funds are trust funds Pioneer on revoking its determination to dissolve was and is entitled to its return.

We pray for Certiorari, and the return to Pioneer of its funds.

Respectfully submitted,

MORRIS LAVINE
*Attorney for Petitioner.*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1953

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No. 371

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In the Matter of the LOS ANGELES COUNTY PIONEER SOCIETY, a Corporation in the Process of Voluntarily Winding Up, *Petitioner and Appellant,*

v.

THE HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA, *Respondent and Appellee.*

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THE PEOPLE OF THE STATE OF CALIFORNIA, EDMUND G. BROWN, Attorney General, State of California, *Interveners.*

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## PETITION FOR REHEARING AND MOTION TO VACATE THE JUDGMENT BELOW AND REMAND THE CASE TO THE CALIFORNIA COURTS.

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*To the Honorable Earl Warren, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:*

We respectfully petition for rehearing. On the same day as our petition for certiorari was denied this court handed down its decision in *State of Arkansas* v. *State of Texas,* unnumbered original, which involved the question of a

charitable trust. There was an intimation in that opinion that the litigation there involved no federal question, and this court continued the matter to see if it might be adequately resolved in the respective state courts involved. Perhaps this court thought our case should also be resolved by the State of California. It should have been, but it wasn't and Pioneer Society is a citizen of the United States within the meaning of the 14th Amendment and entitled to its protection.

Our case involved the federal question—adequately raised in the California courts,—namely, whether it is due process of law to take $95,263.67 from one *undissolved* society and give it to another. "Legalized larceny" was what one California justice called it in his opinion. A hearing is necessary to determine the truth of that serious charge when it is brought to the attention of this Honorable Court.

The following uncontradicted facts appear from the record:

1. The Los Angeles County Pioneer Society is a voluntary non-profit corporation, organized in 1910 under the laws of the State of California. It has always been law abiding, and has always used the funds for which they were given. They will continue to do so, if given an opportunity.

2. In 1941 one of its members gave $15,000, later an additional $5,000 toward the purchase of a home for her fellow-members, then less than 100. (Exhibit K) A building was bought by the Society, used for a meeting hall as intended, managed at a profit, and its mortgage paid; income tax, state and federal tax were paid on the basis that it is not a charitable corporation. On May 1, 1949 its balance sheet showed that the society then had a value of $102,659.27. Not a dollar had ever been distributed to charity.

3. That year its members sued its president in declaratory relief to determine how it could render charity and what it could do with its funds. The Secretary of State

and his legal adviser, a deputy attorney-general were informed of the litigation, but not "served." They did not then intervene or participate. The superior court judge ruled that Pioneer was not a charitable corporation, but a non-profit corporation, that it could dissolve and distribute its assets pro-rata among its members. This judgment became final. A motion to set it aside was denied. It was never appealed. Pioneer proceeded in accordance with this judge's determination. (This was the sole basis of the charge of abandonment of its trusts.)

4. Pioneer then proceeded to initiate statutory proceedings to dissolve through the court in accordance with the first judge's determination. A different judge was assigned. During the period fixed by law not a single member or anyone else objected. One member asked for an accounting.

5. After the statutory time for objecting elapsed, an attorney representing a rival group, called the Historical Society, appeared before the different judge of the superior court to protest and initiate the proceedings that followed. The attorney-general was persuaded to intervene. He asked that the funds of Pioneer be given to another society —namely, the Historical Society.

6. The second superior court judge obliged.

7. The Supreme Court of California approved, two justices dissenting. One justice referred to the matter as "one of the most outrageous examples of legal larceny" and another referred to it as "contrary to law, justice, reason and constitutional guarantees." Violation of the due process clause of the Fourteenth Amendment in the taking of Pioneer's property were raised on appeal and passed upon by the California courts.

8. Immediately after the second judge held that Pioneer funds were charitable it asked the trial judge and the deputy attorney-general for an opportunity to handle its funds as

charitable, to withdraw its dissolution proceedings, and get back its impounded funds. This offer was refused by the trial judge and attorney-general in an exchange of letters and an oral conference.

9. On January 19, 1953 in accordance with Section 4606 California Corporation Code it formally revoked its resolution to dissolve and duly filed its revocation with the Secretary of State.

10. The California Supreme Court nevertheless thereafter denied its motion to remand the case to the Superior Court to restore its funds to it, although it is undissolved. The dissenting justices of California said this was unconstitutional under the federal constitution.

11. The Supreme Court of the United States is the guardian of the Constitution of the United States.

12. That Constitution declares that no property shall be taken "without due process of law" and without just compensation.

13. The Supreme Court of the United States, in denying certiorari on November 16, 1953 completed the process by which Pioneer's assets approximating almost $100,000 are being taken from it without due process of law and without just compensation and being given to Historical Society unless a rehearing is granted.

It is in violation of the doctrine set out by this court in *Kedroff* v. *St. Nicholas Cathedral*, 97 L. Ed. (adv.) 110 and *Church of Jesus Christ of L.D.S.* v. *U.S.*, 136 U.S. 1, 49.

That doctrine provides that property may be seized ONLY where a charitable corporation is *dissolved* for unlawful practices.

Pioneer has not been and is now not *dissolved*.

It has not engaged in any unlawful practices. As a matter of fact it has sought court direction and court approval of every step.

Neither has there been a failure of charitable purposes, nor an illegality or failure of the object.

In *Church of Jesus Christ of L.D.S.* v. *U. S.* it was pointed out that the State may act as parens patrice *only* where no other person is entrusted with it.

Pioneer Society is still existing with capable trustees who managed their property with great success. Under these facts the state has no right to take Pioneer's property.

*Kedroff* v. *St. Nicholas Cathedral*, 97 L. Ed. (Adv.) 110.
*Church of Jesus Christ L.D.S.* v. *U.S.*, 136 U.S. 1, 49.

14. A hearing is necessary to correct this grave injustice to Pioneer, to return its money to it in accordance with the protection of the Constitution of the United States. No statute, or judicial doctrine permits or condones larceny of almost $100,000 or remains silent when it occurs. We should not have had to appeal to this high court to protect Pioneer's money and return it to its rightful owners in accordance with constitutional guarantees. But we are here seeking what was given to us, and what we earned by our efforts, and what has wrongfully been taken from us in violation of due process guaranteed by the 14th Amendment to the U. S. Constitution.

Wherefore, we pray for certiorari, for an order vacating the judgment below, and an order returning Pioneer's funds to it, or remanding the case to the court below with directions.

Respectfully submitted,

Morris Lavine, Esq.,
620 Bartlett Building,
215 West 7th Street,
Los Angeles, California,
*Attorney for Los Angeles County Pioneer Society.*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1953

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No. 371

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In the Matter of the LOS ANGELES COUNTY PIONEER SOCIETY, a Corporation in the Process of Voluntarily Winding Up, *Petitioner and Appellant,*

v.

THE HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA, *Respondent and Appellee.*

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THE PEOPLE OF THE STATE OF CALIFORNIA, EDMUND G. BROWN, Attorney General, State of California, *Interveners.*

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## MOTION TO REMAND CASE TO CALIFORNIA.

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Comes now the Los Angeles County Pioneer Society and moves this Honorable Court to vacate the judgment of the Supreme Court of California and remand the case to that court with directions to remand it to the Superior Court of the County of Los Angeles in accordance with Section

4618 of the Corporation Code of California. This motion is based upon the following grounds and facts:

Pioneer Society, following a suit in Declaratory relief between its then president and its members, based upon a decree in that action, believed it had a right to rely on a decree of its superior court and dissolve and distribute its assets totalling $95,263.67 among its members after dissolution. It proceeded to carry on dissolution proceedings under court supervision. An attorney for a rival society, and the attorney-general intervened in these proceedings. A second judge held the money was "charitable funds" and could not be distributed to its members. He further held that by instituting statutory dissolution proceedings in court it had "abandoned" its trust. He made an order taking the funds away, impounding them in a bank, and later made another order turning the money over to the rival society, the Historical Society.

Pioneer Society on January 19, 1953 duly revoked its resolution to dissolve and duly filed its revocation with the secretary of state in accordance with Section 4606 Corporation Code of California.

The Statutory power to take assets, if constitutional, exists only if the corporation is *dissolved* and the funds held in trust, and no trustee to turn them over to. Here the corporation is not dissolved. Its directors are qualified and capable to carry on. Sec. 9801 Corporation Code of California refers only to "dissolved corporations."

Pioneer has revoked its resolution to dissolve. It intends to continue. It has a constitutional right to have its assets returned to it—the taking of which was without due process of law. It has a right to handle its own funds, if charitable, by its own members, who by their business ability enhanced the assets to nearly $100,000.

Section 4618 of the Corporation Code of California requires court supervision of the revocation where proceedings have been commenced under court supervision to dis-

solve. The California Supreme Court denied the motion to remand.

Unless this court grants our motion the judgment of the Supreme Court of California will be final, and this society in violation of due process of law guaranteed by the 14th amendment will be deprived of its valuable assets—although not dissolved. No statutory or constitutional provision permits confiscation or forfeiture in the light of these facts.

This motion is based upon the entire record before this court, our petition for rehearing and this motion.

Respectfully submitted,

MORRIS LAVINE, ESQ.,
*Attorney for Los Angeles County Pioneer Society.*

## POINTS AND AUTHORITIES.

The statutory power under Section 9801, California Corporation Code, to distribute assets exists only if the corporation *is dissolved.* Here there has been no dissolution. The interest to dissolve has been duly revoked and filed. Section 9801, Section 4606, California Corporation Code.

This Court, in a recent case, held that seized property may only be taken when the Charitable Corporation is *dissolved, Kedioff* v. *St. Nicholas Cathedral,* 97 L. Ed. (Adv.) 110, or where there has been a failure of charitable purposes or illegality or failure of its object. None of these exist here.

This is a re-annunciation of the doctrines of the case of *Church of Jesus Christ of L.D.S.,* 136 U.S. 1.

In *L. A. County Pioneer Society* v. *Historical Society,* 257 Pac. (2) 1, Justice Carter said:

> "The record in this case presents one of the most outrageous examples of legalized larceny which has come under my observation. . . .
>
> "Even if Pioneer is a charitable organization (which I am firmly convinced it is not) it has a right to abandon its dissolution proceedings and correct any deviation from its articles of incorporation. To refuse to permit such corrective action is, in my opinion, to deprive Pioneer of its property without due process of law under both the federal and state constitutions."

Justice Schauer:

> "Particularly do I find no justification whatsoever for refusing to permit Pioneer to take the corrective action which it could not know it should take until this court had ruled that it could not rely on the prior final judgment or its charter from the state.
>
> "Pioneer, by its articles of incorporation and the laws of California was not a charitable corporation; it never intended or pretended to be a charitable corporation; it paid taxes as a non-charitable corporation; it was adjudicated not to be a charitable corporation. With that background it instituted a proceeding for dissolution as it had a right to do. Its every act shows the good faith of the fine citizens composing it. Now

this court rules that it is a charitable corporation and in the same judgment punishes Pioneer for instituting the lawful dissolution proceeding by stripping it of its assets and giving them to another; it refuses even to permit Pioneer, despite the authorization of the statute, to discontinue the dissolution proceeding and to carry out the trust which the court adjudges to exist.

"Such action in my view is contrary to fact, to justice, to reason and to constitutional guarantees."

In *Ohio* v. *Neff*, 52 Ohio St. 375, the court said:

> "The results of establishing this doctrine would be to place every eleemosynary corporation within this state, whether religious, educational or created to administer to the wants of the suffering or needy, beyond the limits of constitutional protection."

In *Estate of Hinckley*, 58 Cal. 512, the court, in upholding the doctrine of cy pres, the court only did "so far as the same may be employed in directing the trustees named in a will or deed to carry into effect the general lawful and charitable intent, when the particular scheme is impracticable, or has become unlawful."

Where a society continues in existence and it has trustees to carry the particular object into effect, no power exists to take that property away from it. Such taking is in violation of the federal constitution.

Even the doctrine of cy pres cannot be applied where the donor has given for one particular specific object.

*Estate of Hinckley*, 58 Cal. 512 says:

> "We entertain no doubt that in the general devolution upon the courts of this state of all judicial power, with respect to charities, is included the power *cy pres*, so far as the same may be employed in directing trustees named in a will or deed to carry into effect the general lawful and charitable intent, when the particular scheme is impracticable, or has become unlawful."

A limitation on the doctrine of cy pres seems to be settled "that where the donor has not expressed his charitable in-

tention generally, but only providing for one specific particular object, and this object cannot be carried out . . . then the court will not execute the trust; it wholly fails."

*Gladdy* v. *St. Matthews Church*, 25 R. I. 628.
*Twentyman* v. *Simpson*, 1 Ch. 314.
*In re University of London Med. Fund; Fowler* v. *Atty.-Gen.*, 2 Ch. 1.
*In re Tarrant's Estate*, 232 P. (2) 3.
*Doyle* v. *Whalen*, 87 Me. 414; 31 L. R. A. 118.
Mass.—*Bowder* v. *Brown*, 200 Mass. 269; 86 N. E. 351.
Miss.—*Teele* v. *Bishop of Derry*, 168 Mass. 341.
*Rowzee* v. *Pierce*, 75 Mass. 846.
Mo.—*St. Louis* v. *McAllister*, 302 Mo. 152.
N. J.—*Roque* v. *Speyer*, 97 N. J. Eq. 447.
*Brown* v. *Condit*, 70 N. J. Eq. 440.
N. Y.—*Saltsman* v. *Greene*, 136 Miss. 497.
Ohio—*Allen* v. *Bellefontane*, 47 Oh. App. 359.
R. I.—*Smith* v. *Ahern*, 52 R. I. 346.
Tex.—*Woman's Christian Temperance Union* v. *Cooley*, 25 S. W. (2) 171; 74 App. 671, 678.

Gifts to a friendly society, the benefit confined to its own members is not a "charitable trust."

*Swift* v. *Beneficial Soc.*, 73 Pa. 362.
*Spence* v. *Widney*, 5 Cal. Unrep. 516.
*Mitchell* v. *Reeves*, 123 Conn. 549.
*Johnson* v. *De Paw University*, 116 Ky. 671.
*Atty. Gen.* v. *Soule*, 28 Mich. 153.
*Re Rabin*, 316 Mo. 429.
*Matter of Shattauch*, 193 N. Y. 446.
*Re Gay*, 138 Cal. 552.

Doctrine of cy pres does not apply:

"Where the charitable purpose is limited to a particular object, or to a particular institution, and no general charitable intent is manifest from the instrument, then if it becomes impossible to carry out the object, or the institution ceases to exist before the gift has taken effect, the doctrine of cy pres does not apply."

*Hopkins* v. *Grinshaw*, 165 U. S. 342; 41 L. Ed. 739.
*Chicago Daily News Fresh Air Fund* v. *Kerner*, 305 Ill. App. 237.

*Peo. ex rel Smith* v. *Braucher,* 258 Ill. 604; 47 L. R. A. (N. S.) 1015.
*Carlisle Co.* v. *Norris,* 200 Ky. 338.
*Bancroft* v. *Maine State Sanatorium Assn.,* 119 Me. 56.
*Gilmer* v. *Bennett,* 116 Me. 382; L. R. A. 1918a 794.

Unless jurisdiction is conferred by statute courts of equity have no jurisdiction to decree a dissolution of a corporation, or to declare a forfeiture of its charter.

*Neill* v. *Hill,* 16 Cal. 145; 76 An. Dec. 508.
*Delaney Products & Ref. Co.* v. *Crystal Petroleum Products Corp.,* 88 Cal. Ap. 784, 264, Pac. 521.
*In re Holly* v. *Bond & Mortgage Co.,* 51 F. (2) 255.
*In re Clinton Co.,* 288 Fed. 829.
*Conken* v. *U. S. Shipbuilding Co.,* 140 Fed. 219.

Statute on dissolution is a contract between society v. state. See

*Fletcher Corp.,* Vol. 16, p. 9, 726—Secs. 8006, 8007.
*Wilan* v. *Proprietors of Central Bardee,* 9 R. S. 590.

Hence until the Supreme Court of California finally held Pioneer contrary to the foregoing cases (and its statute on dissolution) to be a charitable corporation and its gifts "Charitable", it acted at all times in accordance with law and good faith and now has the right—since it is not dissolved—to the return of its funds and the carrying out of the wishes of the donor that it be Pioneer's to use and administer.

Respectfully submitted,

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## APPENDIX.

### Statutes Involved.

California Corporation Code, Section 9800.

"9800. A non-profit corporation may dispose of all or substantially all of its assets, or may be wound up or dissolved, or both, in the same manner and with the same effect as a stock corporation, under the General Corporation Law."

Corporation Code, Section 9801.

"9801. Upon dissolution or winding up of a non-profit corporation, after paying or adequately providing for the debts and obligations of the corporation, the directors or persons in charge of liquidation shall divide any remaining assets among the members in accordance with their respective rights therein, or dispose of them in such other manner as may be provided in the articles unless the corporation holds its assets on any trust.

If the corporation holds its assets on trust, the assets shall be disposed of in such manner as may be directed by decree of the superior court of the county in which the dissolved corporation had its principal office, upon petition therefor by the Attorney General or any person concerned in the liquidation.

This section does not apply where the charter of an incorporated subordinate body is surrendered to, taken away, or revoked by the head or national body."

. . .

"4606. A voluntary election to wind up and dissolve may be revoked prior to distribution of any assets by the vote or written consent of shareholders or members representing no less than a majority of the voting power, or by resolution of the board of directors if the election was by the directors pursuant to Section 4601. Thereupon a certificate evidencing the revocation shall be subscribed, verified and filed in the manner prescribed by Section 4603.

The certificate shall set forth:

(a) That the corporation has revoked its election to wind up and dissolve.

(b) That no assets have been distributed pursuant to the election.

(c) If the revocation was made by the vote or written consent of shareholders or members, the number of shares or memberships voting for or consenting to the revocation and the total number of outstanding shares or memberships the holders of which were entitled to vote on or consent to the revocation.

(d) If the election and revocation was by resolution of the board of directors it shall be so stated."

. . .

"4618. The jurisdiction of the court includes the revocation of the election to wind up and dissolve by the shareholders, and the making of orders for the withdrawal and termination of proceedings to wind up and dissolve, subject to conditions for the protection of shareholders and creditors."

**Certificate of Counsel.**

Morris Lavine, Esq., counsel for the Los Angeles County Pioneer Society, hereby certifies that this petition is filed in good faith and not for the purposes of delay and that it is based on substantial matters occurring since the filing of the petition for certiorari and a motion not previously presented and is restricted to those grounds.

MORRIS LAVINE.